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# MODERN BUSINESS PRACTICE

## Part II

### For Intermediate Classes

by

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with a Foreword

by

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## FOREWORD.

The present book is supplementary to the author's first volume of Modern Business Practice, which has already been approved by the Intermediate Boards of U. P. and Rajputana. It is mainly intended for the students of the Intermediate stage and covers a wide range of topics which have been ably discussed within a short compass for the benefit of the students preparing for the Intermediate Examination in Commerce. The utility of the book is considerably enhanced by the addition of numerous test questions at the end of each chapter and the most recent examination papers in the Appendix.

Prof. Singh's long experience as a teacher and examiner, and his connection with various educational bodies have given him an intimate knowledge of the difficulties felt by students. In the present volume he has explained the intricate commercial procedure in a lucid style and effective manner. I am confident the book will satisfy the genuine needs of the students and the author will earn their gratitude for the service he has done them.

B. N. DAS GUPTA.

*Dean of the Faculty of Commerce.*

LUCKNOW UNIVERSITY.

*Dated, 26th July, 1940.*



## **PREFACE.**

The wide recognition accorded to the author's *Modern Business Practice Part I*, by teachers and students alike, has encouraged him to write the present volume. The necessity for such a book was keenly felt by fellow teachers and the author too, by his long experience as a member of the Committee of Courses in Commerce under the Intermediate Board and as examiner in the subject, was led to think that a book of this kind would serve a useful purpose.

The present book covers the entire syllabuses of the Intermediate Examinations in Commerce of the Boards of High School and Intermediate Education of the United Provinces and Rajputana, that were left untouched by Part I. It deals with all that the students require to know in order to do ample justice to all types of questions that are set at the Intermediate Examinations in Commerce conducted by the Intermediate Boards of U. P. and Rajputana, and also those conducted by the Universities of Punjab, Delhi and Nagpur. Besides numerous test questions at the end of each chapter, most recent examination papers have been given in Appendix II, to help the student in preparing for his examination.

The book is the result of a careful study of the various standard and authoritative works, to the authors and publishers of which, the present writer is deeply indebted. The author is also

particularly thankful to Prof. B. N. Das Gupta for the Foreword that he has very kindly written for this volume. If the book meets the requirements of those for whom it is intended, the author will consider himself amply rewarded.

*Cawnpore,*  
*26th July, 1940.*

B. S.

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## CHAPTER I.

### ESTABLISHMENT OF A BUSINESS.

A business undertaking is a combination of labour and capital for the purpose of production and marketing of goods and its object is to earn profit for its proprietors.

A business house may come into existence by the effort of a (a) sole trader, (b) by the formation of a private partnership or (c) by the formation of a joint stock company. No special procedure is needed in the case of the business of a sole trader or a partnership, but in the establishment of a joint stock or limited company the legal processes or formalities are many and complicated.

In the case of a business conducted by a sole trader all the capital required is generally provided by one man, though this is often supplemented by loans from friends or bankers. There is, however, a limited scope for expansion of such a business, owing to the limited financial resources of the proprietor. This fact together with the need for special attention of the proprietor to the various departments of an expanding business leads to the establishment of a partnership or a joint stock company.

A partnership may be formed by an informal agreement among the partners or by means of a properly drawn up deed of partnership setting forth the terms and conditions on which the



partnership is formed. As soon as the terms are settled the firm is free to commence business operations, if the necessary capital is provided by the partners. The nature and constitution of a partnership will be explained in the next chapter.

There is, however, a limit to the number of persons who can carry on business as a partnership firm. For an ordinary trading business the number of partners should not exceed twenty, while for banking business the number is limited to ten. This fact coupled with the fact that persons of means naturally do not wish to incur liability to the extent of their entire wealth by being partners in a firm, tends to impose limits upon the expansion of a partnership firm, since the liability of each and every partner is unlimited. It is for these reasons that when a business attains any considerable size it is usually converted into a private company or a public company.

Where the persons interested in a business wish to avoid the risk of unlimited liability and are prepared to supply the whole of the necessary capital, a "*private limited company*" may be formed. Provided the capital is adequate such a company has all the advantages of a public company without its disadvantages, and the profits are distributed among a few people who may belong to a single family or a group of families.

When the expansion of a business is rapid and continuous and more and more capital is needed for tapping new resources or capturing new markets, it is often beyond the means of a

firm or a private company to meet the growing needs for capital. This often leads to the formation of a public company, which then purchases the business of a partnership or a private company.

A public company may be formed either to take over a running business or to begin an entirely new business in some particular line which is considered profitable. In many cases the services of a company promoter are utilised in the formation of a company.

Where a joint stock company is formed to take over a running business or, in other words, a private business is to be converted into a joint stock company, the promoter will first settle the purchase price with the vendor of the existing business. Then he will fix the capital of the new company. This must be sufficient to provide adequate working capital after paying the purchase price to the vendors, together with the expenses of floating the company. He will then arrange how the purchase price is to be paid to the vendors—whether in cash or in shares or partly in shares and partly in cash. Very often the vendors require to be appointed managing directors of the company. The next step which the promoter will take will be to procure the services of solicitors to draft the Memorandum and Articles of Association and other legal documents, to appoint the bankers of the company and to secure the names of gentlemen of position and status with necessary qualifications or experience to act as directors. He will also have to find seven persons who will

subscribe their names to the Memorandum and become founders and members of the company.

The prospectus of the company will then be drawn up by the promoter and when approved by the board of directors the same will be advertised in the newspapers. Application forms for shares will be attached to the prospectus. These will be filled up by the people who wish to subscribe towards the capital of the company and the necessary application money will be sent direct to the company's bankers.

When the whole of the "issued capital" is subscribed for or the "minimum subscription" as laid down by the prospectus has been reached, the directors will make a formal allotment of shares in a duly constituted meeting. If the amount for which applications have been received does not exceed the total issued the allotment will be made *en bloc*.

As soon as the allotment has been completed allotment letters are issued to the applicants, who now become the shareholders in the company. If the shares are oversubscribed letters of regret are issued to those to whom no allotment could be made. Share certificates are afterwards issued to the allottees in exchange for letters of allotment. The unpaid amounts on the shares are then called in instalments as provided in the Prospectus and Articles of Association.

### **The Capital of a business.**

As soon as the necessary capital has been obtained either by contribution by partners as in

the case of a partnership or by sale of shares as in the case of a company, the next step is to consider how the capital is to be employed to the best advantage for the conduct of the business. The exact manner in which the capital is to be expended will, however, depend upon the nature of the business that is to be carried on. In the case of a manufacturing business a large amount will be employed in the purchase or erection of buildings, purchase of plant and machinery and office equipment as well as the purchase of raw materials. In the case of a trading concern a large proportion of the capital will be spent on the purchase and equipment of the premises where the trade will be carried on and on the purchase of a sufficient quantity of stocks for the commencement or continuance of the business. Assets which are acquired for permanent use *e.g.*, land and buildings, plant and machinery, are known as 'fixed assets' or 'fixed capital', and those which are acquired for re-sale or conversion into finished products are known as 'circulating assets' or 'circulating capital', *e.g.*, raw materials, stock-in-trade, etc.

After the fixed assets have been acquired a certain amount of capital will remain for carrying on day to day operations and to pay wages and salaries. This constitutes the 'working capital' of a business and signifies the liquid funds, such as cash in hand, bank balances and investments in securities. The proportion of fixed capital to circulating capital may vary considerably as between different types of business. A manufacturing concern, for example, will have a high

proportion of fixed assets in the form of expensive plant and machinery. A wholesale or retail business will, on the other hand, require a high proportion of working capital, as it is not concerned with manufacturing but only with the selling of goods in the form in which they are purchased. It should, however, be noted that fixed capital in one business may be circulating capital in another, for instance, furniture in the possession of a trader dealing in medicines is fixed capital to him but circulating capital to the man who deals in furniture.

### **Organisation.**

The necessary capital having been obtained the next step is to decide upon the scheme of organisation and to give it a practical shape. The details of any scheme of organisation will, however, depend upon the nature of the business concerned, but certain general principles are applicable to all types of business houses.

If the business is to achieve any success, it is necessary that the exact nature of the business should be decided upon at the outset ; for instance, a manufacturing business may be equipped for the production of a certain type of goods or it may specialise in a particular line. A trading concern may engage itself in home trade or export and import trade. In most cases it may concentrate either upon the wholesale or retail trade or both. It must also decide whether its activities are to be confined to a single establishment or whether branches are to be opened. The aim of business

organisation is to bring together all the related or interdependent parts of a business into harmony with a view to achieve economic, efficient and extensive production.

### **Requisites for success.**

The success of a business depends upon several factors, among which the following are important :—

**Skill and energy.** It is necessary that those who undertake any business enterprise should possess the necessary skill and energy to enable them to conduct the business on sound and profitable lines. They should be well acquainted with the technique of their business ; should have a high power of organisation in which system plays an important part ; a power of reading character and prompt diligence in assigning to each subordinate the highest work of which he is capable.

**Business morality.** Business morality or business honesty plays an important part in the success of a business. Straightforward dealings are as important in business as in any other walk of life. Honesty helps in the building up of 'good-will' of a business, which is a great custom-attracting force.

**Business ability and training.** Business ability and training are as important as business morality. Without ability no business can be carried on however honest a businessman may be. Business ability depends first on temperament and next on training. In these days of competition and

specialisation there is very little scope for those who lack in the business ability and training.

**Business connection or Goodwill.** The ultimate object of organisation is to sell goods produced or handled as best as possible. This object will not be achieved if the customers are not satisfied. If this aspect of the business is properly realised the business will develop "goodwill", which is so essential to the continued prosperity of an undertaking.

**Selection of site or locality.** The selection of the right site for a business establishment is a matter of the greatest importance and the future prosperity of a business will be greatly improved by the amount of care and foresight which is devoted to this problem.

In the case of a manufacturing concern attention should be paid to the following points :—

**Cheap source of power.** The factory must be situated at a place in which coal or electricity can be cheaply had.

**Facilities for transport.** In the case of heavy goods involving high costs of transport, the factory must be situated as near as possible not only to the source of supply of raw materials but also for the carriage of goods to the market that is intended to be served.

**Labour supply.** An adequate supply of labour must always be available in the neighbourhood or means must be provided by which such

labour can always be conveniently brought to the works.

The question of site or locality is not so important in the case of a wholesale merchant as in the case of a retail dealer, as the former deals almost exclusively with retail merchants. What is necessary in his case is that the place should be easily accessible to the retail dealers. Wholesale businesses are found generally concentrated in the business centres of large towns. Again the shop of a wholesale merchant need not be made attractive to customers as in the case of retailers.

Locality and position of the business house are of vital importance in retail trade. The locality must be suited to the nature of the business carried on. For instance, it is a folly to establish a business in the locality where there is no demand for the goods in which the business deals. Another consideration is the presence of competition. If the businessman is capable and enterprising there is no reason why the business should not be established where the competition is keen. In fact we find that in certain trades the shops are concentrated in particular localities. A retail business will also flourish in localities which are far away from the main markets.

### **Commencement of business operations.**

After having selected the particular line in which the business is to be carried on and the proper locality for its establishment, the next step would be to make an office and collect prices



of the articles in which the trader is interested. The names of the manufacturers or wholesale dealers would be found in the newspapers and trade journals or in directories which contain names, addresses of the manufacturers, importers and wholesale dealers in different trading centres.

The office will have to be properly equipped with furniture and office machinery, *e.g.*, a typewriter, a duplicating machine, etc. This will, of course, depend on the size of the business. Stationery and account books will have to be provided and letter papers and forms will have to be printed with the name of the firm on them. If the demand for the goods is sufficiently large in the city a telephone may be installed. A banking account will have to be opened for collection and payment of trade and other debts and for giving or securing trade references.

### **Engaging staff.**

On the proper selection of the staff will depend to a large extent the success of the business. It is, therefore, essential that the staff should be engaged with the greatest care. A man just commencing business should take into consideration the expenses involved and thus decide as to the number of persons he would appoint, bearing in mind the degree of efficiency which he would require from each of them. The employees selected should be honest and painstaking and should be thoroughly qualified for the work that is to be entrusted to them.

## **Buying and Selling.**

To buy well is half the success of a trading concern and to sell well is to complete the unit of the financial success. To buy well means to purchase at the most favourable rates having due regard to the quality of the goods. Unless the trader has a good knowledge of the source of supply and can forecast the demands of customers as regards quantity, quality and price, he cannot build up a good business. He should also be able to follow the changes in fashion and taste. A retail dealer must cater to the tastes of his customers and should stock those goods only which are suitable to the class of customers who form his market.

The success of a business will not depend only upon good buying. Efficient methods of selling are just as necessary. The two important qualities of salesmanship are to attract buyers and to induce them to buy. The chief form of advertising in retail trade is window display. It is a powerful selling force and it should be as attractive as possible. When once the customer has been induced to enter the shop a good salesman will see that he does not go back without making some purchases. He should use all methods to induce him, by explaining, how the commodity recommended would admirably suit the customer's purpose, what its merits are, etc. If the buyer has already decided what he wants to buy before entering the shop, a good salesman must be able to satisfy his needs without delay and without trying to divert his taste. Good conversation,

charming manners, and neat appearance are other qualifications which a good salesman should possess.

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### TEST QUESTIONS.

1. Discuss briefly the distinctive features of a sole trader's business, partnership and a joint stock company.

2. What legal formalities are necessary for the formation of partnership and joint stock companies ?

3. Explain clearly what you understand by (a) the fixed capital ; (b) the circulating capital, and (c) the working capital of a business.

4. Discuss the factors on which the success of a business depends.

5. Point out the important points which must be taken into account for the selection of site or locality for a business establishment.

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## CHAPTER II.

### **TYPES OF BUSINESS HOUSES.**

As we have already seen in the last chapter, business houses both wholesale and retail are carried on under several forms of proprietorship, of which (i) the sole or single trader, (ii) the Partnership and (iii) the joint stock company are the most common.

#### **I. The Sole Trader.**

A sole trader is one who carries on business at his own risk and for his exclusive benefit. The businesses of a sole-trading type, where ownership and legal control are vested in one person are more widely distributed than others. Such undertakings are found most commonly in the retail trade, particularly in those sections which deal in household necessities. They are also common amongst those rendering direct services, such as doctors, lawyers, tailors, goldsmiths, and other professional services. Such a business is applicable to all kinds of enterprise, for it involves no legal formalities and is open to all private individuals. The person starting the business should, however, have the legal capacity to enter into contracts, *i.e.*, he must not be a minor or a lunatic, and the business should not be one which is prohibited by law.

In majority of cases the success of a sole-trading business depends upon the skill and knowledge of the proprietor. The business may

be carried on by the unaided efforts of the proprietor as in the case of professional services, or with the help of members of the family or with hired labour from outside. In an extreme case the proprietor may delegate practically the whole of the work of trading to paid assistants. Whatever the arrangement the legal responsibility for the conduct of the business rests solely upon the proprietor.

**Advantages.** A sole-trader's business offers several advantages. It can be started with the minimum of legal formalities and is subject to little official interference. Very little time and trouble are involved in its formation. The proprietor enjoys full legal control over the business and can manage its affairs as he thinks best. The capital employed in the business is usually small and in the majority of cases, the bulk of it is provided from the proprietor's own resources. The form of organisation is simple and personal supervision can be exercised successfully. Without having to consult others or receive sanction from them, he can take immediate action in an opportunity or take proper steps in a critical period. The profits of such a business have a direct relation to the skill, energy, judgment and determination of the proprietor. All the profits go to him and this fact encourages him to do his utmost for the success of his business. Perfect secrecy can be maintained as the law does not require the publication of the results of such a business for general information.

**Disadvantages.** On the other hand, the sole-trader's business suffers from serious limitations.

In the first place, the amount of capital at the disposal of a single individual is decidedly limited. In the second place, the judgment and wisdom at the disposal of any individual are limited as compared with those available in a partnership or a joint stock company. In the third place, the proprietor is exposed to the serious risk of unlimited liability for the debts of the business. His debts run against his entire property and not merely the amount employed in business. All these obstacles restrict the growth of a private business. It is for these reasons that a private business is often converted either into a partnership or a limited company.

A sole-trader's business is successful only where the market is local, the demand regular and where small capital is required ; and competition is not very keen ; where the risk involved is not considerable and where considerable personal attention of the proprietor is essential. Although such a business suffers from disadvantages in the matter of capital, liability for debts, etc. as compared with a joint stock company, it has many advantages over the latter, especially in those businesses where tastes and fashion are not permanent, in which whims and fancies of customers play an important part and where quick decisions are essential. It is for some of these reasons that private business still survives in certain trades.

## **II. Partnership.**

A partnership is the oldest device for overcoming some of the disadvantages from which a

sole-trader's business often suffers, especially those relating to the provision of capital and the difficulties of management. It is the simplest method of extending the size of a business and at the same time of relieving the sole proprietor of part of the business risks. A partnership is the association of people who carry on business together for the purpose of making profits for themselves. It makes possible the union of capital and business ability for the conduct of the business enterprise. The necessary capital is contributed by the partners in the agreed proportions. Each partner usually takes part in the management of the business and profits and losses are divided amongst them in agreed proportions. In some cases, however, one or more partners may provide all or most of the capital and others may contribute labour and skill, with or without some of the capital.

As in a sole trading concern it is not possible for the partners to dissociate themselves from the partnership business, since a partnership has no separate legal existence apart from its members. For this reason the liability of every partner is unlimited for the debts of the concern. This means that if the business fails all the partners are liable both jointly and severally for the payment of the firm's debts. If one or more of the partners become insolvent the whole of the debts of the firm must be paid by the remaining partners.

**Advantages of partnership.**—The advantages of a partnership business may be summarised as follows :—

1. It can be formed without any expense or legal formality and can be dissolved in the same manner.

2. It makes possible the union of capital and business ability for the conduct of the business of the enterprise.

3. It makes possible the raising of a large amount of capital for use in business, as the resources of the individual partners are pooled together in a common fund.

4. The freedom from legal restrictions in its activities makes partnership business extremely mobile and elastic.

5. The fact that all the partners are liable to the full extent of their private fortunes is a distinct safeguard against dangerous speculation.

6. The constitution and management is less cumbersome than larger types of business and can adapt itself to changing conditions.

7. It is specially suitable for businesses in which risk has to be taken, but where profits are likely to be large.

The success of a partnership business is, however, dependent upon the unity of purpose among the partners. This is not always easy to secure. Again, in an ordinary partnership, where each partner has equal rights to take part in management, there is always the danger of divided control. If there are dissensions amongst the partners, these may lead to voluntary dissolution



or forced bankruptcy through bad management. Moreover, it is difficult to withdraw the capital which has been once invested in the partnership business.

**Disadvantages of partnership.** The disadvantages of partnership may be summarised as follows :—

1. The absence of limited liability exposes the partners to unlimited risks and this tends to restrict the growth of enterprise.

2. Since the partnership has no separate existence apart from its members there is an absence of continuity which is present in the case of a company. The death, bankruptcy or retirement of a partner often results in the dissolution of the business.

3. There is difficulty of obtaining fresh capital owing to limitation in the number of partners, and the admission of new partners without the consent of all the partners.

4. The absence of legal regulations and absence of publicity in regard to the affairs of a partnership business often reduces the confidence of people.

### **III. Joint Stock Companies.**

The formation of a joint stock company is a very common method resorted to in modern times for the consolidation and development of existing businesses or starting new ones on a large scale. The joint stock company is a phenomenon

of modern times and has now become a common feature in all fields of productive activity—trade, commerce, industry and finance. Although businesses of the sole trading type are still most numerous, it is the corporate form of business which makes the largest contribution to the wealth of industrial nations. Without the development of joint stock enterprise, with the important characteristic of limited liability there would have been great difficulty in meeting the growing financial needs of modern business. It is the joint stock company which has given impetus to the various inventions which have transformed the whole technique of industry and transport. It is beyond the power of any individual or partnership to control big industries, own railways, steamships, involving huge capital outlay.

The fundamental principle of a joint stock company is that the capital of the business is contributed by a large number of people who are known as shareholders. The company is not merely the aggregate of the members of which it is composed. It has a distinct and separate legal entity or existence apart from its members. It is a person created by law and it can sue and be sued in its own name. The shareholders have only very restricted powers and have practically no voice in the management of the business. The entire management is conducted by a board of directors who are elected by the shareholders. The directors exercise their control through general and departmental managers. A joint stock company is really an extension of the partnership

system with limitation of liability of the members as well as the number of persons who control the enterprise in the interest of those who have contributed towards the capital.

The limitation of the liability of the members is a decided advantage over the partnership and has led to the great development in the scope and size of business enterprises. It has encouraged people to invest large sums in big industrial and commercial enterprises. The fact that shares in such companies are easily transferable by means of the wonderful mechanism of the stock exchange has further accelerated the growth of joint stock companies, owing to the possibility of raising large sums of capital from various classes of people. The joint stock company is today the medium for the supply of capital to trade and industry in all civilised countries of the world.

**Advantages of joint stock company.** The advantages of a joint stock company may be summarised as follows :—

1. A much larger amount of capital can be raised and controlled than would otherwise be possible.

2. The limitation of liability and transferability of capital by shareholders minimises the risk and encourages investment.

3. The risk of loss arising from the failure of business is spread over a large number of people and possibility of loss is minimised.

4. It affords an opportunity to expert and talented people having insufficient capital to join

an enterprise and give the benefit of their talents and expert knowledge to the common benefit of all the shareholders.

5. A joint stock company is a legal entity with perpetual succession and, therefore, more stable in character than a partnership.

6. Owing to the possibility of raising large capital, it enables the size of the business to be extended, and permits of the use of expensive machinery, expert knowledge and business ability.

7. The compulsory publicity and other regulations under the Companies Act, are beneficial to the public, particularly in regard to banking and insurance business.

8. As the liability of the shareholders is limited, this form of business is suited for undertaking risks and experimental ventures, which often yield large profits.

**Disadvantages.** A joint stock company often suffers from a number of disadvantages, and these may be summarised as follows :—

1. The divorce between the ownership and control of capital often leads to the undertaking of highly speculative enterprises, as the men at the top have very little at stake in the matter.

2. There is a lack of individual initiative and personal responsibility. The individual producer can act quickly but the company moves slowly and it is liable to be hampered by disagreement.

3. The business of a joint stock company is liable to get into the hands of incapable people who manage to acquire control over voting power.

4. A joint stock company is not so well suited as a private firm to businesses where personal attention of the proprietor is needed or where there is a fluctuating demand owing to change of fashion and custom.

5. Joint stock companies often form themselves into combinations for exercising monopolistic powers for controlling prices to the detriment of the consumers of the commodity and also the producers in the same line.

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### TEST QUESTIONS.

1. What are the advantages and disadvantages of sole-trading businesses ?

2. What limitations is a sole trader likely to experience when his business expands ?

3. In what businesses does the sole-trader hold his own and why ?

4. Why are so many businesses now conducted as (a) Partnerships and (b) Limited companies ?

5. Enumerate some of the advantages and disadvantages of partnership businesses.

6. Discuss some of the advantages and disadvantages of joint stock companies.

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## CHAPTER III.

### PARTNERSHIP.

**The nature of partnership**—A Partnership, as defined by the Indian Partnership Act, 1932, “is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.”

Persons who have entered into partnership with one another are called individually partners and collectively “a firm” and the name under which this business is carried on is called the “firm name”.

The above definition makes it clear that the following essentials must exist in order to constitute a partnership :—

- (a) There must be an agreement between all the persons concerned.
- (b) There must be a business, and for this purpose the word “business” includes every trade, profession or occupation.
- (c) The business must be carried on by some or all of the partners for the purpose of earning profits which would be divided among them in the agreed proportions.

The relation of partnership arises from contract and not from status, that is, a partnership is a voluntary contract between the partners the object of which is to earn profit from business which may be carried on by all or some of them

as agents for all. Thus, the members of a Hindu undivided family carrying on a family business are not partners, as there is no contractual relation between them. A family business is not the creation of a contract but of status, that is, by right of birth.

The sharing of profits is an important element in every partnership, but it is by no means a conclusive evidence to make the person in receipt of such a share a partner in a business. In determining whether a person is or is not a partner in a firm regard must be had to the real relation between the partners, as shown by all relevant facts taken together.

The sharing of profits or gross returns arising from property by persons holding a point or common interest in that property does not of itself make such persons partners.

The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business does not of itself make him a partner with the persons carrying on the business. For example, a lender of money to persons engaged in a business shall not become a partner only because he receives a certain share of the profits or gets payment when there is profit. A servant or agent getting his remuneration by the receipt of such a share or payment will not necessarily become a partner. Similarly a widow or a child of a deceased partner receiving such a share or payment as annuity or a previous owner

or a part owner of the business receiving such a share or payment as consideration for the sale of the goodwill or share thereof shall not for that reason become a partner with the persons carrying on the business. The most important test under ordinary circumstances for ascertaining a partnership will be the fact whether there is any agreement for sharing the profits and making good all losses in connection with the carrying on of the business.

When no provision is made for the duration or the determination of the partnership by contract between the partners, the partnership is a “*partnership at will*”. When a person becomes a partner with another in a particular adventure or undertaking, the partnership is known as a “*particular partnership*”.

The formation of a partnership is governed by the legal limitation of numbers and by the capacity of the members to contract according to the rules applicable to all contracts. The number of persons who may form a partnership is restricted to ten in the case of a banking business and to twenty in the case of any other trading business. If the number exceeds these limits such a partnership would be called an illegal partnership, with the result that its members shall neither be in a position to sue and recover their claims through a court of law, nor enter into valid contracts. The only course open to such an association is to have itself registered as a joint stock company.

Every person who is capable of entering into a contract may be a partner. A person who is a



minor, lunatic or an undischarged bankrupt, cannot become a partner. A minor can, however, be admitted to the benefits of a partnership, but he will not be personally liable for the acts of the firm, unless he elects to remain a partner after attaining the age of majority. A married woman can be a partner and as far as her partnership liabilities are concerned her separate property alone would be liable.

A partnership cannot be formed for any purpose which is forbidden by law or which is against public policy. For instance, if the object of a partnership is fraudulent or its transactions involve legal injury to third parties, or if it furthers an object which is immoral or opposed to public policy, the partnership is illegal. A partnership which defeats the provision of any enactment or trades with the enemy country is also illegal.

**Partnership Agreement.** No formality is required in the formation of a partnership. It is the result of mutual agreement which may be by word of mouth or in writing or may be implied from the conduct of the parties. The usual practice, however, is to put the agreement into writing embodying in clear and precise language the various terms and conditions which will govern the relations of the partners with one another as well as the internal working of that firm.

Among other things a partnership agreement must contain provisions dealing with the following matters :—

1. The name of the firm and the nature of the partnership business.

2. The commencement and duration of the partnership.

3. The amount of capital to be contributed by each partner.

4. The proportion in which the partners are to share the profits and losses of the business.

5. The amount which each partner is allowed to withdraw in anticipation of profits.

6. If any interest is to be allowed to partners on their capitals and the rate per cent thereof.

7. The rate of interest if any to be charged on the drawings of the partners.

8. If any salary is to be allowed to any partner and the amount thereof.

9. How further capital, if necessary, shall be introduced by the partners.

10. Provision in regard to loans to the business by partners and the rate of interest thereon.

11. Provisions for the proper record of partnership transactions, the preparation of final accounts and the annual audit of the account books.

12. The basis for determining the amount payable to a retiring partner or the representatives of a deceased partner in respect of capital and accrued profits.

13. The basis of valuation of the goodwill of the firm, if any, on the death or retirement of a partner.

14. Clauses defining the rights and duties of partners in regard to the affairs of the partners.

15. Clauses dealing with restrictions if any, to be placed on the authority of any one or more of the partners to bind the firm in matters relating to the partnership business.

16. An arbitration clause for submission of matters in dispute to be determined by an arbitrator.

The name under which the business of a partnership is carried on may be either the name of one or more of its members or a combined title including the names of all or may be made up of a designation entirely different from the names of the members composing it. A partnership, however, has no distinct legal existence like that of a joint stock company, *i.e.* an existence distinct and independent of the members composing it. The firm's name is, therefore, only a convenient title under which the partners carry on their business.

A firm name cannot contain the following words :—Crown, Emperor, Empress, Empire, Imperial, King, Queen, Royal or other words expressing or implying the sanction, approval, or patronage of the Crown or the Government of India or a Local Government without the written order of the Governor-General-in-council.

**Kinds of Partners.** All the members of a firm do not always take active part in the conduct of the business. There may be partners who contribute capital to the firm but do not take any active

part in its management. Partners who take active part in the management of the business are called *Active Partners*, and those who do not take active part are called *Dormant or Sleeping Partners*. There may also be persons who neither contribute any capital or possess any interest in the firm but simply lend their names and credit to the firm in such a way as to make the public believe that they are partners. Such persons are called *Ostensible or Nominal Partners*. They are responsible for the debts of the firm to outsiders to the extent they are misled by them. Such partners are technically said to be "holding out" as partners. Section 28 of the Indian Partnership Act lays down that "if a person who by words spoken or written or by conduct represents himself to be a partner in a firm, he is liable as a partner in that firm to any one who has on the faith of any such representation given credit to the firm".

**Capital of the Partners.** There is no implied obligation in law that partners must bring capital in equal or in any stated proportion. It is a matter which has to be decided by the partners themselves. It is not even necessary that every partner should contribute something towards the capital of the firm. Instances may be found where a partner is admitted into a firm without introducing anything by way of capital. The capital of partners as originally determined by agreement may be increased from time to time by further contributions and by the accumulation of undrawn profits and interest on capital, or may be reduced by withdrawals or losses. The original proportions

of capitals may be altered by the mutual consent of all the partners.

**Liability of Partners.** Every partner is liable jointly with other partners for all the debts and obligations of the firm incurred in the usual course of business while he is a partner. In other words the liability is unlimited. He is also severally liable for the same. This means that if a debt is due from a firm consisting of say X Y Z, the creditor can sue at his option either all the partners jointly or each of them separately for the recovery of the debt. Under the English law the liability is only joint, and hence all the partners must be sued in order to make them all liable for the debt.

**General duties of Partners.** Partners are bound to carry on the business of the partnership to the greatest common advantage. They should be just and faithful to each other and render true accounts and full information of all things affecting the firm to any partner or his legal representative. Such a contract may be varied by the consent of all the partners, and such consent may be express or implied.

**Mutual Rights and Liabilities of Partners.** The mutual rights and duties of the partners of a firm may be determined by a contract between the partners, and such contract may be express or may be implied by a course or dealings among the partners. A partner is not entitled to make a private profit that is, he must not make profit or get commission for himself on sales or purchase of the firm's property or on behalf of the firm.

In the absence of any agreement among the partners :—

(1) Every partner has a right to take part in the conduct of the business ;

(2) Every partner is bound to attend diligently in the conduct of the business ;

(3) Any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, but no change may be made in the nature of the business without the consent of all the partners ;

(4) Every partner has a right to have access to and inspect and copy any of the books of the firm ;

(5) A partner is not entitled to receive remuneration for taking part in the conduct of the business ;

(6) The partners are entitled to share equally in the profits earned and shall contribute equally to the losses sustained by the firm ;

(7) Where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits ;

(8) A partner making for the purpose of the business any payment or advance beyond the amount of capital he had agreed to subscribe, is entitled to interest thereon at the rate of 6% per annum ;

(9) The firm shall indemnify a partner in respect of payment made and liabilities incurred by him in the ordinary and proper conduct of the business of the firm ;

(10) A partner shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm ;

(11) If a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm ;

(12) If a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

**Property of the firm.** Subject to any agreement between the partners, the property of the firm includes all property and rights and interests in the property originally bought into the stock of the firm or acquired by purchase or otherwise in course of the business of the firm, and includes also the goodwill of the business. Unless the contrary intention appears the property and rights and interests in the property acquired with money belonging to the firm are deemed to have been acquired for the firm. Such property in the absence of any agreement between the partners must be held and used exclusively for the purposes of the partnership business.

### **Relation of Partners to third parties.**

Ordinarily, partnerships are based on the mutual trust and confidence of each partner in the skill, knowledge and integrity of every other partner. As between the firm and the outside world each partner is the unlimited agent of every

other partner for the purposes of the partnership business, and as such, he can bind the firm for acts done by him in the name of the firm. This power is called the implied authority of a partner. This authority can, however, be extended or restricted by a contract between the partners.

In case of emergency a partner has authority to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence in his own case acting under similar circumstances and such acts shall bind the firm.

In order to bind a firm, an act or instrument executed by a partner must be done or executed in the firm name or in any other manner expressing or implying an intention to bind the firm.

In the absence of any usage in the kind of business in question or the custom of the firm, every partner in a trading business has implied authority to (1) buy goods on account of the firm, (2) sell goods belonging to the firm, (3) receive payments of debts due to the firm and give valid receipts, (4) draw cheques, draw, accept and endorse bills of exchange and promissory notes in the name of the firm, (5) borrow money in the name of the firm with or without pledging the firm's property, (6) engage servants for the partnership business.

When by the wrongful act or omission of a partner, acting in the ordinary course of business of the firm or with the authority of the partners, loss or injury is caused to any third party or any



penalty is incurred, the firm is liable, therefore, to the same extent as the partner.

When a partner acting within his apparent authority receives money or property from a third party and misapplies it ; or where a firm in the course of its business receives money or property, and such money or property is misapplied by any of the partners, the firm is liable to make good the loss.

**Holding out.** Any one who by words spoken or written or conduct represents himself or knowingly permits himself to be represented to be a partner in a firm, he is liable as a partner in that firm to any one who has on the faith of any such representation given credit to the firm. Such a person is technically said to be "holding out" as a partner. The person giving credit must be one to whom the representation has been made and who has acted on the faith of such representation.

A partner who has retired from a firm may be liable for the debts contracted after retirement, if he has omitted to give proper notice, and "holding out" can be established against him by particular creditors. But the representative of a deceased partner shall not be made liable for any act of the firm done after his death by the continued use of the old firm-name or by the deceased partner's name as part of it.

**Minor as a partner.** As we have seen before, a minor cannot be a partner in a firm but he can be

admitted to the benefits of a partnership with the consent of all the partners. Such a minor has the right to such share of the property and of the profits of the firm as may be agreed upon and he may have access to and inspect and copy any of the accounts of the firm. His share in the firm is liable for the act of the firm, but the minor is not personally liable for any such act. The liability of a minor is thus a limited liability, *i.e.*, limited to his share in the property and profits of the firm. The minor has the right to elect not to become a partner in the firm within six months of his attaining the age of majority. If he fails to give such a notice he shall become a partner on the expiry of the said six months.

**Incoming and Outgoing partners.** A change in the constitution of a firm not involving dissolution, may be brought about by the admission, retirement, death, expulsion or insolvency of a partner. In the absence of an agreement to the contrary no new partner can be admitted without the consent of all the existing partners. A new partner cannot be made liable for any act of the firm done before he becomes a partner. He shall be liable along with the other partners for all acts of the firm done while he is a partner.

**Retirement of a partner.** A partner may retire under the following circumstances :—

- (1) with the consent of all the partners,
- (2) in accordance with an express agreement by the partners, or

(3) where the partnership is at will, by giving notice in writing to all other partners of his intention to retire.

The last clause allows a partner to retire without asking for a dissolution, *e.g.*, when a partner thinks that he can amicably settle his claim with the other partners without a winding up.

A retiring partner remains liable for the debts or obligations of the firm incurred before his retirement, but he may be discharged from any existing liabilities by an agreement to that effect between himself and the members of the newly constituted firm and the creditors. A partner also remains liable for any act done by the partners even after retirement if he does not give a public notice of his retirement. But the absence of such a notice will not make him liable to any third party who deals with the firm without knowing that he was a partner.

**Expulsion of a partner.** A partner cannot be expelled from the firm unless the power of expulsion given by the contract is exercised in good faith. The liability of an expelled partner is similar to that of a retired partner.

**Insolvency of a partner.** When a partner in a firm is adjudicated an insolvent, he ceases to be a partner on the date on which the order of adjudication is made. The adjudication of a partner as an insolvent does not necessarily dissolve the firm. The estate of the insolvent is not liable for any act of the firm done after the passing of the

adjudication order. The firm also is not liable for any act of the insolvent done after the date of such order.

**Death of a partner.** When under a contract the firm is not dissolved by the death of a partner, the state of a deceased partner is not liable for any act of the firm done after his death.

**Rights of an outgoing partner.** An outgoing partner has a right to carry on a business competing with that of the firm, but he cannot use the firm name or represent himself as carrying on the business of the firm or solicit the custom of persons who were dealing with the firm before he ceased to be a partner, unless permitted by the other partners.

A partner may, however, make an agreement with his firm that on ceasing to be a partner he will not carry on any business similar to that of the firm within a specified period or within specified local limits. Such an agreement shall not be invalid if the restrictions imposed by it are not unreasonable.

### **Dissolution of partnership.**

The dissolution of a firm is the dissolution of the partnership between all the partners of the firm. It involves a complete breakdown or the termination of the relation of partnership between all the partners.

The dissolution may be classified under two heads :—

(1) Dissolution without the intervention of the court, (2) and dissolution by the court.

(1) **Without intervention of Court.** A firm may be dissolved without the intervention of the court at any time under the following circumstances :—

(a) When all the partners agree that the firm should be dissolved or it may be dissolved in accordance with the provisions of the partnership deed.

(b) When all the partners are adjudicated insolvent or when all of them excepting one are adjudicated insolvent.

(c) By the happening of an event which makes it unlawful for the business of the firm to be carried on, or for the partners to carry it on. A partnership between a foreigner becomes illegal on the outbreak of a war with his country.

(d) *By the happening of contingencies.* In the absence of any agreement to the contrary, a firm is dissolved :—

(i) *By expiration of the time*, if constituted for a fixed term.

(ii) *By the completion of the venture*, if formed for a particular venture or ventures.

(iii) *By the death or insolvency of a partner.* A firm shall not, however, be dissolved by death or insolvency of a partner if there is an agreement to the contrary between the partners, as has already been stated before.

(iv) *A partnership at will, i. e.* one formed for an indefinite period, may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

(2) **Dissolution by court.** At the suit of a partner the court may dissolve a partnership on any of the following grounds, *viz.*,

(a) That a partner has become of unsound mind.

(b) That a partner other than the partner suing is in any way permanently incapable of performing his duties as a partner.

(c) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business.

(d) That a partner, other than the partner suing wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business or otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him ;

(e) That a partner, other than the partner suing, has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 49 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908, or has allowed it to be sold in the recovery of arrears of land-revenue or of any dues recoverable as arrears of land-revenue due by the partner ;

(f) That the business of the firm cannot be carried on save at a loss ; or

(g) on any other ground which renders it just and equitable that the firm should be dissolved.

### **Registration of firms.**

The Indian Partnership Act of 1932, has for the first time introduced provisions for the registration of partnership firms. The Act does not, however, make registration compulsory, for each and every firm, but the partners as well as the firm will be under a very serious difficulty in enforcing their rights in a court of law if they do not get themselves registered.

**Object of registration.** The main object of registration is to enable persons who wish to enter into transactions with a firm to know who will be liable as partners for the debts of the firm. For, any statement or information required to be given to the Registrar shall be conclusive proof of the facts stated therein about the person by whom or on whose behalf the same was signed. Such registration affords a strong protection to persons dealing with firms "against false denials of partnership and the evasion of liability by the substantial members of a firm".

**How registration is effected.** The registration may be effected at any time by filing with the Registrar of the area in which the place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and

accompanied by the prescribed fee, stating :—  
(a) the name of the firm, (b) the place or principal place of business, (c) the name of any other places where it carries on business, (d) the date when each partner joined the firm, (e) the names in full and the permanent addresses of the partners, and (f) the duration of the firm. The statement must be signed by all the partners or their duly authorised agents and must be duly verified by each of them. When the Registrar is satisfied that the provisions of the Act have been duly complied with, he shall record an entry of the statement in a register, called the Register of Firms.

The Register of Firms shall be opened to inspection by any person on payment of such fee as may be prescribed ; and the Registrar shall on application furnish to any person, on payment of such fee as may be prescribed, a copy certified under his hand, of any entry or portion thereof in the Register of Firms. All alterations in the name or location of the principal place of business of a registered firm, or a change in its constitution must be notified to the Registrar in a prescribed manner. Similarly a notice to the Registrar is also required in case of dissolution.

**Effect of non-registration.** The effect of non-registration is that a partner shall not be entitled to sue, the firm or any other partner or a third party, for enforcing his rights arising from a contract or under the partnership Act. A firm which is not registered will not be able to enforce



its claims against a third party in any civil court. The firm and its partners may get themselves registered before filing any suit in order to secure the advantages of registration.

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### TEST QUESTIONS.

1. Define a partnership. What are the essential elements of a partnership and what circumstances make it an illegal association ?

2. What is a partnership deed ? Specify the principal clauses which should be included in a properly formed partnership agreement.

3. When there is no partnership deed, what are the provisions which will govern a partnership of this kind ?

4. Explain the difference between an Active Partner, a Sleeping Partner, and an Ostensible Partner.

5. What is the test whether the relation of partnership between two or more partners does or does not exist ?

6. What are the general rules for determining the rights, duties and liabilities of the partners in the absence of an agreement between them ?

7. State the circumstances leading to the dissolution of a partnership.

8. In the relation of partners to one another, what is their duty as to (a) rendering of accounts, (b) accounting for private profits, and (c) competing with their own firm ?

9. What is meant by registration of a partnership firm under the Indian Partnership Act and how is it effected ?

10. What is the effect of registration and non-registration of partnership firms as regards enforcement of rights of (a) partners *inter se* and of (b) firm against third parties ?

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## CHAPTER IV.

### JOINT STOCK COMPANIES.

**Origin.** Joint stock companies originated in England in the 17th century with the idea of raising loans for the government. Thus the East India Company, the Hudson Bay Company and the Bank of England were incorporated by Royal Charters and were granted special privileges in consideration of the advances made by them to the estate. The growing needs of commerce and industry could not, however, be answered by the grant of monopolies or special privileges from the sovereign. An Act of Parliament was, therefore, passed in 1844 under which joint stock companies could be incorporated. But the principle of Limited Liability was not recognised until 1855. The Act of 1862 opened up a new era in the history of joint stock companies in that country. This Act has now been superseded by the companies Act of 1929.

The Act which governs the formation and working of joint stock companies in India is the Indian Companies Act of 1913, which has been amended by Act XXII of 1936. The amending Act follows closely upon the lines of the recent English Legislation and introduces many new important and stringent provisions with regard to promotion, management, and working of joint stock companies in India besides special provisions relating to the 'managing agency system'.

**Definition.** A joint stock company may be defined as an association of individuals for purposes of profit, possessing a common capital contributed by the members composing it, such capital being commonly divided into shares, of which each possesses one or more and which are transferable by the owner. It is an artificial person created by law with a perpetual succession and common seal. In the words of Justice Lindlay 'A company is an association the shares of which are transferable'.

Under the Indian Companies Act no company, association or partnership consisting of more than ten persons, can be formed for the purpose of carrying on business of banking and no company, association or partnership consisting of more than twenty persons can be formed for the purpose of carrying on any other business that has for its object the acquisition of gain unless it is registered as a company under the Act. It will thus be seen that an association of more than ten persons for banking business or of more than twenty persons for general trading purposes is regarded in law as an illegal partnership whose members can neither sue and recover their debts nor can they be sued by their creditors.

Companies can be formed in three ways :—

1. By Royal Charter *e.g.* the East Indian Company,
2. By special Act of Legislature *e.g.* The Imperial Bank of India, the Reserve Bank of India ; and

3. **By registration under the Companies Act.** This class is by far the most important as most of the joint stock companies doing business in India are formed in this way.

**Classes of companies.** There are three kinds of companies which can be incorporated under the Indian Companies Act :—

1. **Unlimited Company.** This is a company in which there is no limit on the liability of its members. Every shareholder is liable for the debts of the company as in ordinary partnerships. It has, however, two advantages : (i) the liability of a member ceases at the end of a year from the time he ceases to be a member ; (ii) the shares of the company are transferable. Companies of this type are extremely rare.

2. **Company limited by guarantee.** This is a company in which the liability of the members is limited by the Memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up. Companies of this type are generally associations of persons formed for the furtherance of the cause of professional men or the cause of education, athletics, *e.g.* Chambers of commerce, clubs, libraries etc. The object of such associations is not to earn profit for distribution among their members. There are two classes of such companies. (i) Those having a share capital ; (ii) those which have no share capital.

3. **Company limited by shares.** This is a company in which the liability of members is limited by the Memorandum to the amount if any, unpaid on the shares respectively held by them. Once these shares are fully paid up, there is no further liability. We shall deal with these companies throughout this chapter since they represent by far the most important type of joint stock companies registered in India.

Joint stock companies registered under the Companies Act are also divided into : (a) Private companies and (b) Public companies.

**A Private Company,** under the Indian Companies Act means a company which (1) by its Articles (a) restricts the right to transfer shares, (b) limits the number of its members to fifty, not including persons who are in the employment of the companies ; (c) prohibits any invitation to the public to subscribe for its shares or debentures, and (2) continues to observe such restrictions, limitations and prohibitions throughout its existence.

A private company is a new institution in India created by the Indian Companies Act and is becoming very popular owing to the various legal privileges which it enjoys over public companies.

**A Public Company,** on the other hand is a company, incorporated under the Companies Act, which offers its shares to the public and advertises such offer by means of a prospectus.

Most of the big concerns registered under the Indian Companies Act are public companies.

### **Advantages of a Private Company.**

1. The minimum number necessary to form a private company is two, whereas a public company requires at least seven persons.

2. It need not file the statement in lieu of prospectus.

3. The restrictions put upon the commencement of business, *e.g.*, the securing of minimum subscription and the certificate entitling to commence business, are not applicable.

4. The restrictions placed upon the allotment of shares and the appointment of directors are not applicable.

5. It need not file with the Registrar of joint stock companies a copy of the statutory report or send it to the members.

6. It is not required to file any reports and annual Balance Sheet with the Registrar.

7. Its annual accounts are not required to be audited by Auditors with qualifications required in the case of public companies.

### **Difference between a Joint Stock Company and a Partnership.**

The following are the main points of difference between a joint stock company and a partnership :—

1. A company comes into existence by a special process of registration under the Companies Act or by special Acts of Legislature. A partnership can be formed simply by an agreement between the partners.

2. A partnership cannot consist of more than ten members in a banking firm or more than twenty members in a trading firm. In the case of a company, there is no such limit except that there must be not less than seven persons in a public company or less than two in a private company.

3. A partnership has no legal existence apart from the members composing it. The individuality of the members in the case of a company is entirely lost in the personality of the company itself, which is regarded in law as a separate and distinct entity.

4. In the case of partnership each member is liable jointly and severally for the whole of the firm. In the case of a limited company the liability of each shareholder is limited to the amount unpaid on the shares held by him.

5. In a partnership each partner has a right, unless he otherwise agrees, to take an active part in managing the affairs of the firm. In a company the rights of management are restricted to a special body of shareholders, who are called Directors.

6. In a partnership the rights of the members are regulated by Deed of Partnership

which may be altered by mutual agreement. In the case of a company the powers of the company are governed by the Memorandum of Association while those of the Directors are regulated by the Articles of Association.

7. In a partnership no new member or partner can be admitted except with the consent of all the existing partners. In a public company the shares are transferable without the consent of the shareholders and without affecting its existence. But the holdings of the members can never be withdrawn or repayable on demand from the company.

8. The death or retirement of a partner usually leads to the dissolution of firm. A company has a perpetual existence. The transfer of shares by shareholders and the entry of new ones make no difference to the existence of the company.

9. In case of insolvency the creditors of a partnership proceed not only against the property of the firm, but also against the private property of each individual partner. The creditors of a company, on the other hand, can proceed only against the property of the company in case of necessity and cannot touch the individual shareholders.

10. The capital of a partnership can be increased by further contributions and by undrawn profits or reduced by withdrawals and losses or altered by mutual agreement. The capital of a



company is fixed by the Memorandum and cannot be affected by trading profits and losses. It can only be altered in a special statutory manner.

11. An annual audit by duly qualified auditors is necessary in the case of a public company. This is not necessary in the case of a partnership.

### **FORMATION OF A COMPANY.**

A company may be formed either with a view to acquire and expand a continuing business which has so far been managed by a partnership firm, or to start an entirely new business.

**Promoters.** A company is generally brought into existence by a person or a number of persons, who are known as promoters. A promoter is any individual, syndicate, association or firm etc. which puts into action the machinery by which a company is brought into existence. The functions of the promoters are to have the original documents like the Memorandum and the Articles of Association as well as the Prospectus prepared ; to select persons of influence to serve as directors, arrange to purchase property on behalf of the proposed company and generally to assist in the flotation of a company. The remuneration for the services of the promoters may be paid partly in cash and partly in shares or wholly in shares. The promoter stands in a fiduciary position towards the company and must not therefore make any secret profits at the expense of the company he promotes.

The first step necessary to the formation of a company limited by shares is to have the Memorandum and the Articles of Association prepared and registered.

**Memorandum of Association.** It is a document of extreme importance setting out the objects for which a joint stock company is formed and containing the fundamental conditions upon which it is incorporated. A company exists only for the purposes stated in its Memorandum and any acts done outside the powers given therein are null and void. Greatest care has, therefore, to be exercised in the drafting of the Memorandum with a view to bring within the scope of the company every kind of business which may be necessary at any time in furtherance of the main object of the company. The Memorandum has to be signed by at least seven persons in the case of a public company and two in the case of a private company, and each subscriber must state opposite his name the number of shares he agrees to take in the company.

In the case of a company limited by shares the Memorandum must state :—

1. The name of the company, with 'limited' as the last word in its name.
2. The name of the province where the registered office of the company is to be situated.
3. The objects of the company.
4. That the liability of the members is limited.

5. The amount of the share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount.

**Memorandum of Association of a Company Limited by Guarantee.**

1. The name of the company, with 'limited' as the last word in its name.

2. The name of the province where the registered office of the company is to be situated.

3. The objects of the company.

4. That the liability of the members is limited.

5. That each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

If the company has a share capital—

1. The Memorandum must also state the amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount.

2. No subscriber of the Memorandum may take less than one share.

3. Each subscriber must write opposite to his name the number of shares he takes.

**Memorandum of Association of an Unlimited Company.**

1. The name of the company.

2. The name of the province where the registered office of the company is to be situated.

3. The objects of the company.

If the company has a share capital—

1. No subscriber of the Memorandum may take less than one share.

2. Each subscriber must write opposite to his name the number of shares he takes.

**The Name of the Company.** A company cannot be registered with a name identical with a company already registered, except where the company in existence is in the course of being wound up. It cannot use the prefix 'Royal' or 'Imperial' without the sanction of the Governor-General-in-council.

Any company may, by special resolution and with the approval of the Local Government signified in writing, change its name. The registrar will enter the new name on the register in place of the former name, and issue a certificate of incorporation altered to meet the circumstances.

**The Objects of a Company.** The objects of a company must be set out with great care and accuracy as a company exists only for the purposes

which are stated in the Memorandum of Association. It is the charter of the company and governs its dealings with the outside world. Any acts done by the company exceeding those set out in the Memorandum are *ultra vires* and, therefore, null and void.

A company may by special resolution alter the provisions of its Memorandum with respect to the objects so far as may be necessary to enable it :—

(i) To carry on its business more conveniently, (ii) to attain its main purposes by new or improved means, (iii) to enlarge or change its local area of operation, (iv) to carry on any business which under the existing circumstances may conveniently or advantageously be combined with the business of the company or (v) to restrict or abandon any of the objects specified in the Memorandum.

**Articles of Association.** These are the regulations or by-laws which govern the internal management of a company. They regulate the relationship between the company and its Directors and between the company and its members. The Memorandum of Association defines the area of the directors' powers. Within that area a company can make rules which it thinks necessary in the form of Articles. The Articles regulate the issue of capital, the transfer and forfeiture of shares, holding of meetings, define the powers of the Directors, their qualifications, the rights of shareholders *inter se*, declaration of dividends, the keeping of accounts and their audit.

The Articles must be set out in paragraphs and numbered. They must be printed, bear a deed stamp, and signed by the persons who signed the Memorandum. Where a company is limited by shares and does not frame Articles of its own, a model set of Articles called 'Table A' given in the Indian Companies Act become applicable and must be adopted by such a company.

A company may by special resolution alter or add to its Articles, but any alteration or addition which is in conflict with the Memorandum of Association is null and void. Any special resolution altering the articles must be printed and forwarded to the Registrar of Companies within 15 days of its confirmation.

### **Registration of Memorandum and Articles.**

The Memorandum and the Articles (if any) must be stamped in accordance with the Stamp Act, signed by each subscriber (who must add his address and description) in the presence of at least one witness who should attest the signature, and then forwarded to the registrar of the Province in which the registered office of the company is to be situated, along with the registration fee, which must be in the form of stamps.

**Incorporation.** When the Memorandum and Articles have been duly filed with the Registrar and the necessary fees paid, the Registrar issues a 'Certificate of Incorporation' under his hand and seal declaring the company to be incorporated, under the Indian Companies Act. From the date of incorporation as mentioned in the certificate of

incorporation, the subscribers of the Memorandum, together with such other persons as may, from time to time, become members of the company, form a body corporate by the name contained in the Memorandum. The company then becomes entitled to exercise all the functions of an incorporated company; having perpetual succession and a common seal. The certificate of incorporation is a conclusive evidence that all the requirements of the Act in respect of registration etc., have been duly complied with. If a company is a private one, it is at liberty to commence business soon after incorporation, but a public company cannot commence business until it has obtained another certificate, entitling it to commence business.

**Prospectus.** A company cannot proceed further after incorporation without the issue of its prospectus inviting the public to subscribe for its shares. A prospectus is a document issued by a public company inviting the public to subscribe for shares or purchase debentures of the company. Its main object is to induce the public to subscribe for the shares and debentures of the company with a view to receive the necessary money to make up the capital of the company. The prospectus describes the nature and prospects of the business which the company is going to undertake and the profits that are likely to be earned. At the end of the prospectus there is generally an application form to be filled up by persons wishing to take up shares in the company. Those who issue a prospectus, holding out great advantages to the would-be shareholders, must

state everything with strict and scrupulous accuracy, because it is on the faith of the prospectus that people apply for shares. Every prospectus issued by or on behalf of a company must be dated. A copy of such prospectus signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, must be filed for registration with the Registrar of Joint Stock Companies on or before the date of its publication. Every prospectus must state on the face of it that a copy has been filed for registration.

**The contents of the Prospectus.** Every prospectus issued by a public company must contain the following information :—

(1) The contents of the Memorandum and Articles of Association, with the names, descriptions and addresses of the signatories and the number of the shares subscribed for by each.

(2) The number of qualification shares of the directors as laid down by the Articles of Association.

(3) The names, description, and addresses of the directors and managers or managing agents, (if any) and the remuneration payable to them.

(4) The minimum subscription on which the directors may proceed to allotment and the amount payable on application and allotment of each share.

(5) The names and the addresses of the vendors of any property purchased by the company, and the amount paid or payable to the vendors



as purchase money for such property in cash, shares or debentures of a company.

(6) The underwriting commission (if any) to be paid on the issue of shares and the rate of such commission.

(7) The amount payable as discount in respect of shares (if any) issued at a discount.

(8) The amount or estimated amount of preliminary expenses.

(9) The date of and parties to, every material contract relating to the acquisition of any property, and the place at which such contract may be inspected.

(10) The names and addresses of the directors of the company.

(11) Particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by the company.

(12) Where the company has issued shares of different classes, the right of voting at meetings and the rights in respect of capital and dividends enjoyed by each class of shareholders.

**Statement in lieu of prospectus.** When a public company does not issue a prospectus, it cannot allot shares or debentures unless it has filed with the Registrar a statement in lieu of prospectus signed by every director or proposed director and containing practically the same information as is required to be disclosed in a prospectus.

**Restrictions as to the appointment of directors.** On the application for registration of the Memorandum of Association and the Articles of a company, the applicant must deliver to the Registrar a list of the persons who have consented to be directors of the company. A person cannot be appointed a director or proposed director, unless before the registration of the Articles or the publication of the prospectus he has (a) signed and filed with the Registrar his consent in writing to act as such director, and (b) has either signed the Memorandum for a number of shares not less than his qualification (if any) or signed and filed with the Registrar a contract in writing to take from the company and pay for his qualification shares (if any).

This restriction does not apply to a private company.

**Allotment of shares and Restrictions on Allotment.** Allotment means the distribution of the shares of a company in response to the applications made for them or in fulfilment of a contract to do so. An application for shares in a company whether accompanied by deposit or not, is simply an offer to take the shares applied for and may be retracted before it is accepted. The company may or may not accept the offer until the offer is accepted by allotment. There is no contract, and the application may be withdrawn. But if the notice of withdrawal does not reach the company before the notice of allotment has been posted it is ineffectual.

No allotment of shares offered for subscription can be made by a company unless the following conditions have been complied with :—

- (a) The amount (if any) fixed by the Memorandum or Articles and named in the Prospectus as the minimum subscription upon which the directors may proceed to allotment, or
- (b) if no amount is so fixed and named then the whole amount of the share capital so offered for subscription, has been subscribed, and the sum payable on application for the amount so fixed and named or for the whole amount offered for subscription, has been paid to, and received in cash by the company.

The amount payable on application on each share must not be less than five per cent. of the nominal value of the share.

If the conditions aforesaid have not been complied with on the expiration of one hundred and twenty days after the first issue of the prospectus, all money received from applicants for shares must be forthwith repaid to them without interest.

The allotment of shares is made by directors by means of a resolution in a meeting and an applicant for shares cannot become a shareholder until he has received a notice of allotment. *A letter of Allotment* bearing a 2 annas stamp is sent to each allottee informing him of the numbers

of shares allotted to him. If no allotment is made to an applicant a *Letter of Regret* is sent to him and the money received with the application is refunded.

**Return as to allotment.** Within one month from the date of allotment, every company must file with the Registrar a Return of the Allotments, stating the names, addresses and descriptions of the allottees, the number of shares allotted, and the amount paid or due and payable on each share, and in case of shares allotted as fully or partly paid up otherwise than in cash, a copy of the contract in writing, constituting the title of the allottee to the allotment and showing the consideration in respect of which such allotment was made, must be filed with the Registrar.

**Restriction on commencement of Business.** By section 103 a company cannot commence business or exercise any borrowing power unless :—

- (a) the shares amounting atleast to full minimum subscription have been allotted for payments made or to be made in cash ;
- (b) the directors have paid for their shares to the same extent as the public ;
- (c) the secretary or a director has filed with the Registrar a declaration that all such conditions have been complied with ; and
- (d) in case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the Registrar of companies a statement in lieu of prospectus.

The registrar will then certify that the company is entitled to commence business.

### CAPITAL.

**Share Capital.** The capital of a joint stock company is the amount subscribed by the shareholders for the purpose of the company.

**Nominal Capital** is the amount stated in the Memorandum of Association. The capital possessed by a company may be only a portion of its capital, not necessarily the whole of it. The full amount of the company's capital exists very often only in name, hence the use of the term to indicate such capital.

**Authorised Capital** is the amount stated in the Memorandum of Association. The Memorandum is looked upon as the charter which *authorises* the existence and acts of the company, hence the application of the word to its capital.

**Registered Capital** is the amount stated in the Memorandum of Association. The Memorandum has to be *registered* by the Registrar of joint stock companies, and this fact accounts for the use of the term with reference to the company's capital.

Thus, Nominal, Authorized, and Registered Capital are the same.

**Issued and Subscribed Capital.** This is the capital represented by the number of shares that have been issued to the public for cash, and to the vendors as fully or partly paid. A company frequently *issues* only a part of its shares, hence

the use of the term Issued Capital to denote the part so issued.

**Unissued Capital** is that portion of the capital which has not been issued to the public, vendors or others.

**Called-up Capital** is the amount of money called up on the shares actually subscribed. A company does not necessarily require the full amount at once on the shares it has issued, and, therefore, *calls up* only such as it needs, hence the use of the term.

**Uncalled capital** is the amount of the capital remaining *uncalled* on the shares actually issued to the public and to the vendors and others.

**Paid-up Capital** is the amount of the called-up capital that has actually been *paid up* by the shareholders, some of whom sometimes fail to pay the sums due from them when a call is made. This includes, of course, the amount of shares issued for consideration other than cash.

**Calls in Arrear** are the amounts called up but not paid by the shareholders. Thus, the called-up capital less calls in arrear would represent the paid-up capital.

**Working Capital** means the capital available for the working of a business after its fixed assets have been acquired.

**Watered Capital** is represented by the issue of additional capital without any extra payment in cash, such as, bonus shares.

## SHARES.

A share is an individual portion of a joint stock company's capital owned by a shareholder. In order to satisfy the requirements of the various classes of investors companies generally issue several distinct classes of shares. The respective rights of the different classes of shareholders are usually laid down in the prospectus and are also mentioned in the Memorandum and Articles of the company. Every shareholder is given a certificate under the common seal of the company which evidences his holding in the share capital of the company. This is called a *share certificate*.

**Classes of shares.** Shares are divided into different classes according to their respective rights.

**Ordinary Shares** are those which have no special or particular rights, but merely the ordinary right of every shareholder, as such, to participate in the profits.

**Preferred Ordinary Shares** are those which have a right to a fixed dividend after the payment of dividend to the preference shareholders.

**Deferred Ordinary Shares** are those which rank for dividend after the preferred ordinary shares, and which are usually entitled to the profits then remaining.

**Preference Shares** are those which have a prior claim on any profits available for dividend. They may also have a prior claim to repayment of capital in the event of a winding up. If the

shares are not cumulative preference shares, the preference dividend is payable only out of the profits of each year; and if not paid then, the preference shareholder cannot claim to receive it out of profits in subsequent years.

**Cumulative Preference Shares** are those on which the fixed dividend accumulates until it is all paid, the arrears of any one year being carried forward as a charge upon the subsequent year's profits. There is, however, no obligation to pay until a resolution has been passed declaring a dividend. Preference Shares are always cumulative as to dividend, but not preferential as to capital.

**Redeemable Preference Shares** are a new class of shares created by the Indian Companies Act 1936, which a company may issue if authorized by its Articles. The company may provide for their repayment only by creating a 'Reserve Fund' built up of 'profits', which, otherwise, would have been available for dividends. No such shares can be redeemed unless fully paid.

**Deferred, Founders, or Management Shares.** These are shares which have to wait for their dividend until all other classes of shares have participated in the profits. They are often taken by the founders or promoters of the company, and sometimes by the vendors. They are generally entitled to the whole or a very large portion of the surplus profits after payment of all prior claims.



**Difference between Shares & Stock.** Shares are transferable only in their entirety. In order to make them transferable in smaller amounts, they are frequently converted into stock. Stock may be transferable in fractional parts of a unit. Shares may be only partly paid, but stock must always be fully paid. Shares are numbered while stock is not identified in this way.

## **DEBENTURES.**

Every trading company has an implied power to borrow money. The usual way in which a company borrows money is by issuing Debentures.

**Debentures** are loans to limited companies bearing a fixed rate of interest, the principal being either repayable after a certain number of years, or irredeemable during the existence of the company. Irredeemable debentures are mostly issued in the case of railway and other large companies.

**Simple or Naked Debentures** are those where no security is given for payment of interest or repayment of principal.

**Mortgage Debentures** are those which are secured on the company's property, giving a charge upon either the whole or a portion of the assets.

**Floating Debentures** are those which are secured by a floating charge on the company's assets.

Debentures are also classified as :—

1. **Debentures to Bearer**, that is, debentures payable to bearer, with or without power for the bearer to have them placed on a register or to have them at any time withdrawn from it. These are transferable by simple delivery.

2. **Registered Debentures**, that is, debentures payable to a registered holder, with or without interest coupons payable to bearer. Any transfer of these must be registered with the company.

**Difference between Debentures and Debenture Stock.** Debenture Stock is borrowed money consolidated into one sum for the sake of convenience. Debentures need not be fully paid ; debenture stock must always be fully paid. Debenture bonds are transferable only in their entirety ; debenture stock may be transferable in multiples of a unit or fractions thereof.

**Debenture Interest** is the interest payable yearly or half-yearly on the money borrowed.

**Difference between a Shareholder and a Debenture holder.**

(a) A shareholder is an *inside* person or a partner in the company whereas a debenture holder is an *outside* person, merely a loan-creditor of the company.

(b) A shareholder shares in the profits of the company and gets a dividend on the money he has invested ; whereas a debenture holder is entitled to his agreed interest irrespective of the

fact as to whether the company has made profit or loss. The interest on debentures is, therefore, a charge against profits, whereas a dividend in respect of shares is an appropriation of profits.

(c) In the event of winding up of the company, a debenture holder, even if unsecured, will always rank for repayment in full before the shareholders of any class.

### **MANAGEMENT OF A COMPANY.**

The management of a joint stock company is vested in a body of persons known as Directors. Every company registered before the passing of the company's Amendment Act of 1936 must have at least two directors if it is a public company. Public companies incorporated after the passing of the new Act are, however, required to have at least three directors. Private companies are under no obligation to have any directors. The directors are usually named in the Articles of Association. If no directors are named in the Articles, then the signatories to the Memorandum of Association in the first instance form the Board of Directors, until such time as other directors are appointed in their place by the shareholders in the general meeting. Casual vacancies in the midst of the year are filled by the Board in accordance with the regulations contained in the Articles. Any shareholder can be elected a director, but the Articles of companies generally lay down that the director must hold a certain number of shares to qualify himself to act as

director. The directors are in a way appointed to act in the best interests of the company and its members. They cannot, therefore, make any secret profits so long as they act as directors.

**Managing Director.** The directors of a company usually appoint one or more of them to the office of a managing director or manager for such term and such remuneration as they may think fit. Such a director is known as managing director and the remuneration payable to him may be by way of salary, or commission or participation in profits or partly in one and partly in the other. The managing director usually has most extensive authority to act for the company and the company is bound by every act of his, coming within the scope of his authority.

### MANAGING AGENTS.

A peculiar system is in operation in connection with company management in India. In the great majority of companies the entire management rests with firms of businessmen known as managing agents, who frequently style themselves as secretaries, agents and managers, according to the terms of their agreements with the companies they manage, subject to the supervision of the directors. There are a number of prominent firms or companies in most important business centres in India who have made it a business to manage companies, especially those floated by them. Their agreements with the companies, provision for which is often made in

the Articles of Association, entitle them to certain allowances as their remuneration for managing the companies besides substantial payments either in cash or fully paid or partly paid shares in consideration of founding or floating the companies concerned. In certain cases the managing agents secure very high remunerations for long term of years, or for life or even in perpetuity. The persons interested under these agreements contrive to keep for themselves sufficient shares under their control to prevent the passing of a special resolution to alter these provisions. The managing agency system is a peculiar feature of Indian companies and is not found anywhere else in the world.

#### **Advantages of the Managing Agency System.**

The system has in the past contributed greatly to the development of Indian industries. Without it such important industries as tea, jute, cotton, coal etc. would either not have been developed or developed much more slowly than they have done. Even now in centres where joint stock companies are thoroughly established and their principles understood, it is extremely difficult to start a new venture unless the promoters have at their private disposal, a considerable proportion of the requisite capital resources. Moreover, the banks in India are generally reluctant to advance money to limited liability companies unless the managing agents are prepared to furnish personal security for the same.

Apart from providing the initial capital the managing agency system is advantageous to

companies in other ways. In the first place, the companies concerned obtain at a comparatively reasonable cost the services of men of outstanding ability and long business experience, which would be beyond the reach of individual companies. In the second place, they get the advantages of having at their disposal highly qualified staff. In the third place, the managing agents with their purchasing and sales organisation, are able both to buy raw materials, machinery etc. and sell the finished products to the best advantage of the companies under their charge. Further, the managing agent is often of real service to the companies in temporary difficulties. Thus, when the tea and cotton industries were passing through a period of depression and banks were unwilling to advance money to them on account of the losses which they had suffered and their very existence was threatened, it was the managing agents who borrowed funds on their own personal security and enabled the companies under their care to weather the storm.

**Disadvantages of the Managing Agency System.** Under the managing agency system the industry tends to be dominated by financial rather than industrial considerations. The agents are people who can supply the necessary funds rather than people who have the necessary technical knowledge to carry on the industry. Any weakness in the financial position of the agents often leads to speculative activity on the part of those who wish to get control of the company by acquiring majority of shares. Many of the 'Corners' which

have disgraced the Bombay Stock Exchange during the last 30 years have been the result of the interdependence between the agents' external activities and their functions as financial agents of the companies they manage.

Besides the above defects which are inherent in the system of managing agency, there are serious abuses which the system leads itself to. At times there is a serious conflict between the agents of a company and the shareholders, and the former with their inside knowledge of the working of the companies which they manage are able to manipulate the holdings in various companies in such a way as to secure for themselves the maximum profit at the cost of the shareholders. Another source of abuse is that very system of control and united administration and a common purchasing and sales organisation which in the case of good management is so beneficial to companies. Often unreasonable and unfair conditions are included in the agreements which give the agents power to supply raw materials as well as stores and machinery. They often act as brokers and agents for insurance companies with whom the companies under their control effect insurance. In some cases the terms of remuneration laid down are unreasonably excessive. Profits on which commission is payable are often held to cover items which have no relation to them at all. Again agreements are often so worded as to ensure the appointment, virtually in perpetuity of the managing agents. Another abuse to which the system has led itself in India is

the practice whereby managing agency firms are made as it were family concerns—a son, however incompetent succeeding his father.

**Position of managing agents under the new Act.** The managing agents have been brought under the purview of the Companies Act for the first time by the amending Act which has introduced reasonable safeguards to protect the interests of shareholders. What the new Act has sought to achieve is not to end the managing agency system, but only to amend it. Unless the managing agents have been appointed before the issue of the prospectus and their terms and remuneration are mentioned therein, the appointment of the managing agents has now been made dependent upon the sanction of the general meeting of the shareholders. All new appointments of managing agents are to be for a period of not more than 20 years at a time, and in the case of existing agencies, the period is to terminate within 20 years, unless a re-appointment is made before the expiry of the said 20 years.

The remuneration of the managing agents is now to be based on a fixed percentage on the annual net profits of the company under their charge, subject to a maximum amount in case of absence or insufficiency of profits. Any other form of remuneration or any variation in the terms of appointment and remuneration has to be sanctioned by the shareholders.

Investment of the funds of a Company by the managing agents in another company under the same management or the employment of funds



of a Company in the purchase of shares and debentures of another company under the same management has now been forbidden. The managing agents are also forbidden to carry on a competitive business on their own account.

The shareholders have further been given the rights to remove the managing agents if they are convicted of an offence in relation to the affairs of the company punishable under the Indian Penal Code or if they are adjudged insolvent, by passing a resolution in a general meeting.

To protect the rights and claims of the managing agents, it has, however, been provided that the termination of the contract of managing agency will not be valid unless the moneys due to the managing agents are paid off. It is further provided that for all liabilities and obligations legitimately incurred by the retiring managing agents, they will have to be treated as a charge on the assets of the Company. The transfer of office by the managing agents has now been made dependent upon the general sanction of the shareholders.

### **Books, Accounts and Audit.**

Under section 130 of the Act, every company is required to keep proper books of account with respect to (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure arise. (b) All sales and purchases of goods by the company, and (c) the assets and liabilities of the company. The books of account shall be kept at

the registered office of the company or at such other place as the directors may think fit, and shall be open to inspection by the directors during business hours. The managing agents or where there are no managing agents, the directors are liable to penalty for any default made by the company in complying with the above requirements.

The directors of every company must lay before the shareholders in general meeting a Balance Sheet and a Profit and Loss Account, or a Balance Sheet and Income and Expenditure Account in case of a non-trading company, first within 18 months and subsequently once at least in every year. The Balance Sheet and Profit and Loss Account or the Income and Expenditure Account are required to be audited by a duly qualified auditor appointed by the company and his report must be appended thereto. A copy of such accounts must be kept at the registered office of the company for the inspection of the members for at least 14 days before the general meeting. It is further provided that every company other than a private company must send its audited Balance Sheet and Profit and Loss Account or Income and Expenditure Account (as the case may be) together with the auditor's report to the registered address of every member at least 14 days before the date of the general meeting. The auditor's report must also be read before the shareholders in general meeting and kept open to inspection by any member attending the meeting.

The Act further lays down that the directors shall make out and attach to every Balance

Sheet a report with respect to the state of the company's affairs, the amount, if any, which they propose to carry to Reserve Fund Account etc. The report may be signed by the Chairman of the Board of Directors, if authorised by them.

A copy of the Balance Sheet and Profit and Loss Account must be filed with the Registrar of Joint Stock Companies within 21 days after the annual general meeting, along with the Annual List of Members and summary of Share Capital.

The shareholders of a Public Company are entitled to be furnished with a copy of the Profit and Loss Account and Balance Sheet together with the Auditor's Report on payment of a charge not exceeding six annas for every 100 words or fractional part thereof.

### **Statutory Books.**

In addition to the proper books of account, the following registers are now compulsorily required to be maintained by every company :—

1. Minute Books—For recording minutes of proceedings of meetings of (a) directors and (b) shareholders.

2. Register of members—Containing the names, addresses and occupation of the members, the number of shares held by each and the amount paid thereon; the date on which he became or ceased to be a member.

3. Index of members—When the register of members does not contain a proper index.

4. Register of Directors, Managers and Managing Agents, containing their names, addresses and occupation, and the date of appointment.

5. Register of contracts—Containing particulars of all contracts or arrangements in which any director is directly or indirectly concerned or interested.

6. Register of Debenture-holders—Containing full particulars as to name, address and occupation of each debenture holder, the date of allotment, the number of debentures held, the amounts paid thereon etc.

7. Register of mortgages and charges—Containing a short description of the property mortgaged or charged, the amount of the mortgage or charge and the names of the mortgagees or persons entitled thereto.

8. Annual List of Members and Summary of Share Capital—Containing names, addresses and occupations of all the past and present members, the number of shares held by each of the existing members and summary of the share capital of the company under various heads.

### **Liquidation or Winding up.**

The Liquidation or Winding up of a company is the process by which it is dissolved. The effect of winding up is that the assets of the company are disposed of and the proceeds are utilised in the satisfaction of its debts, the balance being returned to the shareholders according to their rights. The shareholders do not get anything until the creditors

are fully paid. A company may go into liquidation not only when it becomes insolvent, but also when the shareholders think that it will not be profitable to continue the business. A company may also go into liquidation for the purpose of reconstruction or amalgamation with another company. Such a liquidation does not involve the conversion of the assets into cash.

The liquidation may be either (i) Voluntary, (ii) Under supervision of the Court, and (iii) Compulsory under orders of the Court.

A company may be wound up voluntarily when (a) the period, if any, fixed for the duration of the company expires, or (b) the event, if any, occurs on the happening of which the Articles provide for a winding up. Such a liquidation is brought about by passing an ordinary resolution by the shareholders in the general meeting of the company. When a company has passed a special or extraordinary resolution for a voluntary winding up, the Court may direct that voluntary winding up shall continue subject to the supervision of the Court.

In all cases of winding-up, a liquidator is appointed to realise the assets, pay off the liabilities and distribute the balance of sale proceeds among the shareholders according to their rights. The liquidator is given full powers to settle the list of contributories and to make calls. There are two lists of contributories—List A and List B—which the liquidator has to prepare. The List 'A' includes all those persons who were members of

the company at the time of the commencement of the liquidation, while List 'B' includes persons who have transferred their shares within one year of the date of liquidation. If the amount recovered from List 'A' contributories is not sufficient to pay off the debts of the company, the liquidator will make calls on those whose names appear in List 'B'. The contributories of List 'B' are liable for debts incurred by the company when they were members and only when the amounts realised from List 'A' are insufficient. The liquidator under voluntary liquidation is merely an agent of the shareholders, but in the case of liquidation under supervision of the Court or under compulsory liquidation, he is an officer of the Court.

**Distribution of assets.** The amounts realised by the liquidator for the various assets as also those realised from the contributories are to be distributed by him in the following order:— (i) in paying the secured creditors from the proceeds of their securities, (ii) in paying the expenses of liquidation, including his own remuneration, (iii) in paying preferential creditors, (iv) in paying unsecured creditors and finally (v) in distributing the surplus, if any, among the contributories, according to their respective rights and interests.

It will appear from the above that in winding-up, the creditors are divided into different classes for purposes of settling their claims. Fully secured creditors are those who hold

securities to the full extent of their claims ; partly secured creditors are those whose claims are not fully secured, while unsecured creditors are those who hold no security for their claims. Preferential contractors are those who will rank for payment before unsecured creditors, and they are people to whom payments are due in respect of salaries, wages etc.

In the case of voluntary liquidation, the liquidator has to make up an account of the liquidation, showing on one side the amounts realised by sale of assets as well as those obtained from contributories, and on the other the payments made to the various classes of creditors, including expenses of liquidation and his own remuneration. This statement is to be presented before a general meeting of the shareholders at the end of the first year and at the end of each succeeding year until the winding-up is completed.

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### TEST QUESTIONS.

1. Define a joint stock company, and mention the various kinds of companies that can be registered under the Indian Companies Act.

2. In what respects does a public company differ from a partnership ?

3. Explain precisely what is meant by "Limited Liability", and "Corporate Body". Can a company be incorporated under the Indian Companies Act with limited liability of the members without the word "limited" as the last word of its name ?

4. What do you understand by the Memorandum of Association and Articles of Association of a company? Discuss their main contents.

5. Explain the particular features and privileges of a private limited company as compared with a public company. How does a private limited company differ from a partnership?

6. Describe the procedure necessary for the formation of a joint stock company, and name the important documents which must be filed with the Registrar of Joint Stock companies for the purpose of registration.

7. Name and define the document by which a company appeals to the public for subscription and state the principal clauses of such a document.

8. Five persons trading together wish to convert their business into a limited liability concern. State briefly how they should proceed, assuming that (a) they do not wish to take any outsiders into the business, and (b) they wish to invite the public to subscribe to the share capital of the proposed company.

9. What is meant by:—Authorised Capital, Issued Capital, Called up Capital, Reserve Capital, Paid up Capital, Fixed Capital, Circulating Capital and Working Capital?

10. Explain the different kinds of shares which joint stock companies generally issue. What is the object of such a classification?

11. What restrictions has the Companies Act placed on the allotment of shares and commencement of business by a joint stock company?

12. How does a joint stock company differ from a partnership as regards management and control of its affairs?

13. What are the Statutory Books of a joint stock company? Give a short description of each.



14. Discuss the merits and demerits of the system of having the business of a joint stock company conducted by a firm of managing agents. What is the position of the managing agents under the present Act ?

15. What is meant by " Winding-up " of a joint stock company, and how is the process of winding up carried out ?

16. Write short notes on :—

Company Promoter, Underwriting Commission, Certificate of Incorporation, Debentures, List of Contributories.

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## CHAPTER V.

### FOREIGN TRADE.

The nature and importance of foreign trade have already been explained in Part I of this book, but in order that the procedure connected with the importation and exportation of goods, which will be explained in the following chapters, may be clearly understood by the reader, it would be well to devote a chapter to this important topic in this volume as well.

Foreign trade means the exchange of the surplus products of a nation for those of another. If a country were entirely self-supporting, *i.e.*, producing within its boundaries all the requirements of its population, it would probably subsist without any foreign trade whatsoever. But such a condition is hardly possible owing to climatic conditions and specialisation of industries in the various parts of the world. Foreign trade supplies the home market with imported goods and enables the surplus produces of industry to be exported to other countries. It enables nations to balance their mutual requirements and the economic prosperity of a nation largely depends upon the character and the quantity of the goods which it imports and those which it exports.

**Advantages of Foreign Trade.** The advantages of foreign trade may be summarised as follows :—

(1) A country obtains the articles which cannot be produced at home. It also gets access

to supplies of commodities which are produced more cheaply abroad.

(2) Connection with many sources of supply can be established, so that if one source fails, another is available ; and the danger of famine and scarcity is minimised.

(3) It leads to an increase in the world's productive powers and cheaper prices all-round, for each country produces the articles in which it has the greatest advantages.

(4) A wider market is created for the surplus produces of a country and differences as well as fluctuations in prices are considerably reduced.

(5) Interchange of goods often facilitates the interchange of ideas and promotes peace and goodwill among nations.

The foreign trade of a country is divided into the import trade and the export trade. The import trade has to do with the purchase of goods from foreign countries, while the export trade deals with the sale of goods to foreign countries. In this and the following three chapters we shall confine our attention to the sea-borne trade only, that is, the carriage of goods by steam ships. The sea-borne trade of India has increased steadily since the advent of the British rule, and now amounts to nearly 600 crores of rupees per annum, including both imports and exports. The principal items in our import trade are manufactured goods, such as cotton and woollen piece-goods, railway material, machinery, hardware, tobacco, wines and spirits, etc. The exports by

sea consist of raw materials and food grains, such as cotton, jute, rice, tea, etc. The principal countries with which India has got trading relations are the United Kingdom, Japan, United States, China and the countries comprising the British Empire. The largest share in India's foreign trade is taken by the United Kingdom, both as regards imports and exports. Before the outbreak of the present war both Germany and Italy had a considerable share in our foreign trade.

In its object foreign trade is simply an extension of the home trade, but it differs from the latter in several important respects. In the first place, there are a number of difficulties which the producer or manufacturer has to face in exporting his goods to foreign countries. In the second place, there are numerous intermediaries or middlemen whose services are more or less indispensable.

**Difficulties of Foreign Trade.** Unlike the home-trade persons engaged in foreign trade have often to face many difficulties and obstacles in their way. These may be summarised as follows :—

(a) Long distances, lack of quick means of communication and transport are causes of considerable trouble. Personal contact between buyer and seller is almost impossible and transport of goods is expensive, and considerable time has to pass between the dates of despatch and delivery of the goods.

(b) Owing to the diversity of languages between different countries, it is difficult to

secure orders from strange people speaking bewildering languages in far off and unfamiliar lands. People engaged in foreign trade must be able to conduct correspondence in foreign languages. It is for this reason that almost all English and Continental Universities have made the study of one or two foreign commercial languages compulsory in their examinations.

(c) The transport of goods across great ocean spaces exposes them to various marine risks which are beyond human control. The goods have to be most carefully packed and insured against all losses that are likely to occur in the course of carriage by sea.

(d) Owing to the absence of direct personal contact with the foreign trader, reliance has, perforce, to be placed solely on samples and letters sent out through the post.

(e) Barriers of protective duties and other hindrances are often imposed by foreign governments against import of goods in order to protect their own industries from foreign competition. Protective duties increase the prices of goods to foreign consumers and thereby restrict trade.

(f) When all other difficulties have been overcome, there still remains the task of obtaining payment for the goods ; of making sure that the foreign customer will not evade payment ; and finally, of ascertaining what amount will be realised and how it will be realised in terms of home currency. There will be no difficulties in these

matters, if good banking facilities and adequate legal protection are available to the traders in the countries concerned.

(g) In periods of war the risks of transport are very great. Ships may be destroyed or sunk, or the goods may be seized by the enemy and no compensation whatsoever may be available. Moreover, freight and insurance charges are considerably increased in such times.

**Types of Intermediaries.** So far as procedure is concerned, foreign trade differs from home trade in several respects. Whereas home trade involves the purchase of goods by consumers from the manufacturers and retailers, foreign trade is carried on through wholesale merchants. Again, in the home trade goods are sometimes sold by manufacturers direct to consumers, and the tendency is to eliminate the middleman as far as possible. In foreign trade the middleman plays an important part at each stage in the progress of the goods from the manufacturer to the foreign consumer. His services are not only necessary but indispensable.

In the progress from the producer to the consumer goods usually pass through the hands of the following intermediaries:—

**In the Exporting Country.**

1. Exporting agent.
2. Packing and forwarding agent.
3. Steamship company.

### In the Importing Country.

1. Clearing and forwarding agent.
2. Importing agent.
3. Wholesale dealer.
4. Retail dealer.

It must not be assumed that the goods will always pass through the hands of all the above intermediaries. In some cases one or more of these may be eliminated, *e.g.*, in the purchase of stores by the Government of India.

The course outlined above cannot be regarded as complete, since it leaves out of account the part taken by banks, shipowners, insurance companies, dock authorities and the railway companies in both countries, all of which render equally important services.

**Customs Duties.** The foreign trade of a country is greatly influenced and affected beneficially or adversely by its own Customs duties as well as by those levied by countries having commercial relations with it. The term *Customs duties* applies to taxes imposed on commodities imported into or exported from a country. It differs from *Excise*, which is a tax levied by the Government, on certain goods manufactured in the country itself. The manufacture of salt, liquor and opium is liable to excise tax in this country. In India the customs duties are regulated by a special Act, known as the Customs Act, and constitute one of the important items of the revenue of the Government of India.

To facilitate the collection of the tax, Government have established customs offices at all the port towns. Customs duties are levied on most of the goods imported into the country and a few of the commodities exported to other countries.

Most of the duties imposed on goods imported, are for purposes of revenue, but in certain cases additional duties have been imposed with a view to give some sort of protection to home industries against foreign competition. These are known as *protective duties*. Goods imported from the United Kingdom and countries of the British Empire are charged at concession rates. The duties levied in such cases are known as *preferential duties*, as they are intended to give preference to the products of certain favoured countries.

**Tariff.** The most important document connected with the Customs is the tariff. It is a schedule of duties imposed by the Customs authorities. The duties are either *specific* or *ad valorem*. *Specific* duties are charged on the quantity of the goods exported or imported, *i.e.* so much per maund or gallon, while *ad valorem* duties are calculated as a percentage on the value of the goods. Most of the duties in this country are *ad valorem*.

The work of the customs houses is divided into four important departments *viz.*, (i) the import department, (ii) the export department, (iii) the appraisement department and (iv) the preventive department. The work of the appraising department is to examine casks of wines,



spirits, chemicals, etc., to find out their strength and the scale at which they are taxable. The preventive department is to prevent the carrying of unauthorised or unlicensed articles.

**Methods of securing orders from abroad.** Both manufacturers and wholesale merchants engaged in the export trade secure orders from abroad by some or all of the following methods :—

(1) By sending their own representatives to visit possible customers in foreign countries.

(2) By sending letters and leaflets by post to the prospective buyers in foreign countries.

(3) By advertisements in Home and Foreign Trade Journals.

(4) By inviting visits from foreign buyers or their representatives.

(5) Through export merchants and commission agents.

(6) Through foreign agents and branches.

Manufacturers, export merchants and others, who are engaged in the export trade, devote a considerable part of their time in the study of the markets from which they expect to receive orders. Some firms trade in all parts of the world, while others confine their activities to a special section only. For instance, some firms export cotton and hides and skins to all parts of the world, while others specialise in the export of cotton to England and Japan. Big firms covering many sections

of the trade set up special departments dealing exclusively with each section. Personal representatives are sent out into the proposed market to study the distribution of population, the habits and religious prejudices of the people, general commercial conditions, methods of advertising, facilities of transport, banking and credit, other sources of supply, prices etc. From the information thus obtained, sales plans are drawn up and these are modified from time to time on the results of practical experience.

It follows from the above that in opening up a new market for his goods in a foreign country, the intending exporter should first make himself familiar with the following :—

(a) The financial and political conditions prevailing in the country to which goods are to be exported.

(b) The requirements of the people for the commodity in question and their purchasing power.

(c) The terms and conditions of sale.

(d) The terms of payment and the nature of the banking facilities.

(e) Customs restrictions and duties in the importing country and the mode of packing required.

(f) The methods of litigation in case of non-payment.

**Direct and Indirect Export.** A manufacturer or a wholesale produce merchant who is about to enter the export trade must decide whether he will himself enter the foreign markets as an exporter or whether he will have his commodities exported through a commission agent. If he directly undertakes this business without the assistance of any agent, he will avoid the profit of the middleman. There is a growing tendency nowadays for a direct contact between the exporter and the foreign importer. This has become possible owing to the adoption of various methods of world-wide advertisement and the existence of quick means of communication and transport. As a general rule, however, most of the export trade is conducted through professional exporter, as he is found to be more expert in the methods of his particular market. He has the organisation, capital and experience necessary to ship and to finance his shipments to the markets in which he specialises. As a rule, he can do this more easily than the manufacturer ever could.

**Enquiries and Quotations.** Enquiries and quotations are generally received and given before an order is secured from a foreign buyer. An enquiry is a request to be informed of the price at which goods will be sold or services rendered, while a quotation is the reply to an enquiry. Both quotation and enquiry should contain full details of the goods required, their description, grade, size, weights or other distinguishing features, the number or quantity, the time and method of delivery, method of packing; and in the case of a

quotation the price and terms of sale. Where distances are great, it is essential that all the necessary information should be given when the quotation is based upon an enquiry. All details which form part of the contract of sale must be mentioned clearly. In case of first enquiry, it is usual to make some investigation regarding the financial position of the new buyer either by means of banker's reference (if such a name is supplied by the buyer), or by means of trade reference, i.e., through some firm having business relations with the person or firm in question; or through *Enquiry agencies* in the foreign country who specialise in obtaining and furnishing information regarding all classes of businessmen.

Enquiries and quotations are often made by means of telegrams or cablegrams sent in code language. Before making a quotation, an exporter will have to calculate the prices at which he can ship the goods. Where the manufacturer or producer is himself the exporter, the cost of the goods is known to him; but where the shipper is a professional exporter, he will have to make his own enquiries from various produce dealers or manufacturers, and then consider which quotation is likely to give the greatest satisfaction to the foreign buyer in respect of quality, price and time of delivery. He has also to ascertain the expenses necessary for packing, carriage to port, freight and shipping charges, marine insurance etc. Which of these expenses would be necessary to be included in the calculation of the export price, would depend upon the terms of delivery desired in the enquiry.

The price may be quoted either in the currency of the exporter or that of the importer. Where the quotation is to be made in the foreign currency, it would be necessary to ascertain the amount of his own currency which he would get at the rate of exchange prevailing when the transaction is likely to be completed.

**Price Quotations.** In addition to the terms used in connection with purchases and sales in home trade, a number of special terms are used in the quotation of prices in foreign trade. The following are the most common terms :—

**F.A.S.** (Free alongside ship) means that the price includes the charges for bringing the goods to the side of the ship, but that the charges for loading will be borne by the buyer.

**F.O.B.** (Free on Board) means that the price includes the charges of loading the goods on the ship in which they are to be carried. Such a quotation usually names the port of shipment, *e.g.* "F.O.B. London". The buyer has the option of naming the ship.

**C. & F.** (Cost and Freight) indicates that the freight will be paid by the seller and that he will secure the necessary bill of lading. It is necessary to state the name of the port of delivery in such a quotation, *e.g.*, "C & F. Bombay".

**C.I.F.** (Cost, Insurance and Freight) signifies that the freight as well as the cost of insuring the goods against marine risks is included in the quotation and will be paid by the seller.

The port to which the charges are paid must be mentioned.

**Ex.-Ship** means that the seller will pay all expenses up to the time the goods arrive at the port of discharge, but that the buyer must pay the expenses of taking delivery from the ship.

**In Bond** signifies that the delivery is to be made into a Customs warehouse at the port of destination, but that all charges connected with taking delivery therefrom and the import duty will have to be paid by the buyer.

**Duty Paid** means that the duty on goods at the port of landing is to be paid by the seller. This may or may not include the charges for warehousing until delivery is taken.

**Franco, Rendu or Free** signifies that all charges for delivery to the buyer's warehouse are included in the quotation. Such quotations are very uncommon and are used in connection with trade with neighbouring countries only.

**Methods of Securing Payment.** In home trade payment for the goods purchased is made by remitting actual cash, cheque, bill of exchange or a Hundi. In foreign trade the creditor must be paid in the money of his own country, and for this purpose the usual method of payment is a bill of exchange.

When a shipment has been made, the exporter draws a bill of exchange either on the importer or upon the bank, with whom the importer has made suitable arrangements. There are three

principal methods by which an exporter may obtain payment under draft terms.

The exporter may draw a bill of exchange on the importer, ordering the latter to pay to his order or to his bank, attach to the draft the bill of lading, marine insurance policy and the invoice, and hand over the documentary draft, as it is now called, to an exchange bank for collection. The bank will thus forward the draft together with the above documents to its branch in the importer's country, where it will be presented to the importer for acceptance, after which the documents, i.e., the bill of lading and insurance policy will be handed over to the importer, after having been duly endorsed, and the importer will then be able to take delivery of the goods on producing the bill of lading to the shipping company. In such a case the draft will be marked "D/A", showing that documents are to be handed over on acceptance of the draft. Alternatively, if no satisfactory credit arrangement is made, the documents will be handed over only on payment of the amount of the bill, in which case the bill will be marked "D/P", indicating that documents are to be handed over on payment of the bill. The amount realised will be credited to the account of the exporter.

In case the exporter wants payment immediately after shipment of the goods, he can discount the draft with his exchange bank, after signing a letter of hypothecation. This is a letter addressed to the bank, authorising it to sell goods and reimburse itself for the amount advanced to the

exporter, together with its charges in case the bill is dishonoured at maturity. The procedure with regard to presentation and payment will be the same as in the previous case, excepting that the amount realised will not be credited to the exporter.

The exporter may require the importer to open credit with an exchange bank, so that drafts may be drawn on the exchange bank. In such a case the importer requests his bank to issue to its agent or branch, a letter of credit requesting the branch or agent in the exporter's country to accept the latter's draft against a particular shipment. When this is done the exporter will draw his draft on the importer's bank and present it to his bank for discount. The discounting bank will present the draft for acceptance by the bank upon which it is drawn, and hand over the documents in return for acceptance or payment, as the case may be.

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### TEST QUESTIONS.

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1. Explain the nature and advantages of foreign trade.
2. Give some idea of the difficulties which a trader engaged in foreign trade has to face.
3. Name the different types of intermediaries in foreign trade. How far can they be eliminated ?
4. Explain the difference between Customs and Excise Duties. For what purposes are they imposed ?



5. What is the difference between specific and ad valorem duties ?

6. In what ways does foreign trade differ from home trade ? For what reasons is trade carried on between nations.

7. Give some idea of the methods that are generally adopted for securing orders from foreign countries.

8. How can an exporter obtain payment for his goods from foreign countries ?

9. Explain the following terms and abbreviations :—

F.O.B., C.I.F., F.A.Q., D/A., Ex-ship.

10. Write explanatory notes on :—

(i) Tariff, (ii) Protective Duties, Preferential Duties, Imperial Preference.

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## CHAPTER VI.

### IMPORTING.

India being predominantly an agricultural country, mostly imports manufactured goods of various kinds from different parts of the world. But as we have seen in the last chapter, most of her import trade is with the United Kingdom. We shall therefore explain here the procedure connected with the importation of goods from England. The goods may be imported into this country in reponse to actual orders from buyers in india or received on consignment from abroad to be sold on account and risk of the consignor. But the process of importation is the same whether the goods are imported against orders or on consignment. As the proportion of imports on consignments is very small in this country, we shall describe the import procedure relating to an actual order from an Indian buyer.

#### **The Indent.**

The first stage in the importing procedure is the placing of an order or indent for goods with a manufacturer or an exporting firm in the foreign country. An indent is an order for goods placed with a foreign merchant or manufacturer, containing full particulars relating to the quantity, quality and price of the goods ordered, the mode of making up and packing, the marks, shipment, insurance, port of destination and the method of payment. Great care should be taken in writing indents,

since the omission of single point will mean a considerable delay in their execution, and sometimes wrong goods may be sent which cannot be returned to the seller living in a foreign country. Majority of the indents sent to England from this country, are forwarded to exporting firms or commission agents, whose main business is to procure the goods ordered, from the manufacturers and attend to their packing and forwarding to the importers. The following is a specimen indent for cycles and accessories, placed with an exporting firm in London by a Cawnpore firm.

36, Meston Road,  
Cawnpore, 30th May, 1940.

Messrs. Hamilton & Co.,  
13, Tower Street,  
London, E.C.

Dear Sirs,

Please purchase and ship on our account and risk the undermentioned goods, by first steamer :—

Price—As per catalogue No. 34.

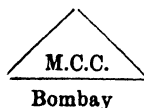
Delivery—C. I. F. Bombay.

Ship—By Orient's—Delivery before 1st August.

Insurance—15% above invoice value.

Packed in strong wooden boxes.

Marked—



Payment—Draw at 15d/s D/A through the National Bank of India Ltd.

Yours faithfully,  
Midland Cycle Co.

No. or quantity	Description	Quality	Remarks
1 doz.	B.S.A. Cycles (Gent's Pattern)	A Quality	Transfers on frame "Mid-land Cycle Co., Cawnpore".
1 doz.	Barton on Humber Cycles (Gent's Pattern)	Roadster	
1 doz.	Raleigh's Cycles (Gent's Pattern)	Imperial	
1 doz.	Standard Humber (Gent's Pattern)	Old model	
3 doz.	Cycle pumps-hand	Dunlop	
3 doz.	Cycle pumps-foot	"	
3 doz.	Cycle saddles (Terry's)	Best quality	
6 doz.	Cycle bells no. 61	..	

On receipt of the indent, the exporting firm will duly acknowledge it and arrange to procure the various articles required, by placing orders with the manufacturers. The ordering and purchasing would be on the lines indicated in connection with home trade. The packing and marking will be carried out by the suppliers, in accordance with the instructions received from the exporting firm. A distinction mark and number together with the port of destination will be stamped on each package.

### Shipping the goods.

When the goods are ready for shipment, the packages will be delivered at the docks to a Shipping Company for carriage to the destination.

The customs formalities will be gone through, by a Forwarding agent or by the exporter himself. The freight will be paid and the exporter or the shipper of the goods will obtain at least three copies of the bill of lading from the shipping company and effect insurance on them, for which he will obtain a marine insurance policy.

### **The Bill of Lading (B/L).**

When goods are carried in ships to a foreign country, a document known as a bill of lading is issued to the shipper of goods. It is one of the most important documents and serves the same purpose as a railway receipt in an inland transaction. The bill of lading is a document upon which the master of a vessel acknowledges the receipt of goods, and is a written evidence of an agreement between the shipping company and the exporter for the carriage of goods and their delivery at the destination, in consideration of an agreed sum of money, known as freight.

The bill of lading states the quantity of the goods, their condition, the marks on the packages, the name of the shipper, the name of the party to whom the goods are consigned, the name of the vessel, the name of her master, the port of loading and the port of discharge as well as the amount of freight, and whether the same is paid by the shipper or is to be realised at the destination. Each shipowner has his own form of a bill of lading, but the forms issued by the various shipping companies do not differ materially from one another.

If the shipment is not on consignment, the name of the consignee is not given and the bill of lading is made out "to order" of the shipper, in which case it has to be endorsed in favour of the consignee. This is done so that in the event of non-acceptance or dispute, the consignor or his agent may have control over the goods.

The bill of lading is signed by an officer of the Shipping Company, who will certify that the goods are received on board in good order and condition. If, however, there are any defects in the condition of the packages, *i.e.*, if they are broken or loose, a remark to that effect will be made on the bill of lading. A bill of lading bearing such an endorsement is termed a *foul* bill, and is of little value as security or a document of title. A *Clean* bill of lading is one which does not bear any endorsement like the above and is taken as a proof that the goods have been received in good order and condition.

Though the terms of the bill of lading may state that the goods are received in *good condition*, they do not bind the shipowner to deliver them in like condition. Apart from providing a seaworthy-ship and the exercise of due care, the shipowner is not liable for damage to the goods arising from "perils of the sea". The bill of lading, in fact, contains a long list of the sea perils, for which the shipowner accepts no liability. To provide against these risks, an insurance policy must be taken out from an insurance company.

Bills of lading are usually made out in sets of

three, each of which requires a stamp of the value of 6d. in England, before execution. A stamp of four annas is necessary in India. Two copies are usually sent to the consignee by different mails, so that, if the first is lost in transit, the other may be delivered to him in time. One unstamped copy is retained by the shipper.

Bills of lading may be made out to the order of any particular individual or firm, and are transferable by endorsement, which is termed *assignment*. The effect of the endorsement is to transfer the rights and title in the bill of lading to the transferee or the new owner. It is, therefore, called a document of title, and can be transferred to any person, who purchases the goods in good faith and for valuable consideration. For this reason it is frequently described as a negotiable instrument. A bill of lading is not, however, a full negotiable instrument, although it is freely transferred by endorsement and delivery. It differs from a bill of exchange on the point of negotiability, since, unlike the holder of a bill of exchange, the transferor of a bill of lading cannot give a better title to the transferee than he himself has. The bill of lading, therefore, serves three purposes, *viz.*,

- (1) It is a document of title to goods.
- (2) It acknowledges receipt of goods on board.
- (3) It incorporates all terms of the contract of affreightment between the shipper of the goods and the shipping company.

Where the bills of lading are forwarded to the importer or consignee through a bank, it is essential for the bank to endorse each bill immediately below the signature of the shipper, and the consignee must also endorse the bill, before he can obtain delivery of the goods from the Shipping Company. On receipt of the bill of lading the consignee must look out for the arrival of the ship, and make the necessary arrangement for securing the bill of lading, on the production of which the Shipping Company will deliver the goods to him or to his agent. If the freight is payable at the port of destination, the consignee must pay the same before he can obtain delivery of the goods.

### **Insuring the Goods.**

As we have seen above, the shipowner is in no sense the insurer of goods. The bill of lading imposes no obligations upon him, except providing a vessel to carry the cargo between the two ports. To provide against the various risks connected with the sea voyage, which are excepted in a bill of lading, a marine insurance policy is taken out from an insurance company by the exporter. Insurance of goods is an important feature of the overseas trade and requires the special attention of all those who have to do with the shipping of goods.

The particulars of the goods to be insured and the voyage, are generally submitted to several insurance companies either by the shipper himself or through an insurance broker, in order to obtain their quotations about the premium. On receipt



of these the exporter places his business with the company, giving the lowest quotations. Marine insurance may also be arranged with the underwriters on the "Lloyds", so called, because they underwrite or subscribe names to each policy they are concerned in.

The marine insurance policy is a document setting forth the conditions on which the insurance is made by the insurance company or the underwriters, as well as the amount involved, the premium to be paid and the ports between which the insurance is valid. There are several kinds of insurance policies. A *voyage policy* is one which is taken out for a particular voyage. Majority of cargoes are insured under this scheme. A *time policy* is one taken out for a specified period irrespective of voyages, but it should not exceed one year. When a large number of shipments has to be made to one market, a *floating policy* is generally taken out for a certain sum, say £ 5,000. As each shipment is made the corresponding value is written off on the floating policy. A *valid policy* is one in which the agreed value of the goods insured is stated. An *open policy* is one in which the value is not stated, but is left to be declared and proved in case of a claim for loss.

### **Exporter's Invoice.**

Having secured the Bill of Lading and the insurance policy, the exporter will proceed to prepare his invoice in triplicate to be sent with the three copies of the bill of lading. The export invoice for our transaction will be as follows :—

**EXPORT INVOICE.****Cable add :** Hamiltonco., London.

13, Tower Street,

**Codes used :** A.B.C. (6th Ed.),  
Libers & Private.

London, E.C.

**Messrs. MIDLAND CYCLE Co.****Bought of HAMILTON & Co.,**

EXPORTERS AND COMMISSION AGENTS.

Goods shipped per s.s. "Rajputana" P. & O.  
Service, on 15th July, 1940.

Mark	Quantity	Description	Rate	£. s. d.	£. s. d.
M.C.C.					
Bombay. 126—130 Case No.					
126	1 doz.	B.S.A. Cycles (Gent's Pattern) Quality A.	£4 10 0	54-0-0	
127	1 doz.	Barton on Humber (Gent's Pattern) Qual. Roadster.	£4 0 0	48-0-0	
128	1 doz.	Raleigh's Cycles (Gent's Pattern) Qual. Old Model.	£4 5 0	51-0-0	
129	1 doz.	Standard Humber (Gent's Pattern) Qual. Old Model.	£4 6	51-12-0	
	3 doz.	Dunlop Cycle Pumps-hand.	18/-doz.	2-14-0	
	3 doz.	Dunlop Cycle Pumps-foot	24/-doz.	3-12-0	
130	3 doz.	Terry's Saddles Superior Quality.	60/-doz.	9-0-0	
	6 doz.	Cycle Bells No. 61.	12/-doz.	3-12-0	223-10-0
		<i>Charges :—</i>			
		Packing & Making up five cases.	10/- each.	2-10-0	
		Freight & Primage.		15-0-0	
		Cartage & Dock Charges.		1-15-0	
		Bill of Lading.		0-2-6	
		Insurance.		0-2-2	
		Commission @ 2½% on £. 223/10/0		5-11-9	25-1-5
Drawn at 15d/s through the National Bank of India, Ltd. E. & O. E.					248-11-5 Hamilton & Co.

**Certificate of Origin.**

A certificate of origin is also required to be sent along with the Export Invoice for goods shipped to certain countries. Owing to special trade agreement made with her Dominions and India as well as with certain foreign countries, Great Britain enjoys a more favourable treatment from them regarding import duties on her manufactured goods exported there. This arrangement gives an advantage to the foreign importers as well as to English exporters, because they can sell English goods cheaper in foreign markets, in competition with the goods of other countries. In order that a lower rate of import duties may be claimed by the importers in India, the customs authorities here, will have to be satisfied as to the value of the goods and with the fact that the goods were manufactured in Great Britain. The certificate of origin takes the form of a declaration as to the invoice figures, and must be sworn by the exporter before a magistrate or a Chamber of Commerce, after which it is to be signed by the consul of the importing country.

**Documentary Bill.**

The Invoice, Bill of Lading and Insurance Policy now being ready, the exporter will take steps to reimburse himself for his outlay and commission. This he will do under the conditions of the order, by drawing a bill of exchange either on the importer or upon the National Bank of India, Limited, with whom the importer has made an arrangement. In our illustration, we shall

suppose that the bill is drawn on the importer. Like the Bill of Lading and Invoice three copies of the bill of exchange will be taken out and each copy will bear a reference to the other two. Bill of Lading, Insurance Policy and Invoice in triplicate, as well as the certificate of origin will be attached to the bill, which will also be in triplicate, and whole will be handed over to the Head office of the National Bank of India, Ltd., in London with a letter, containing instructions for collecting the amount stated therein from the importer. The Bank will forward to its Cawnpore branch, the first bill of exchange (which will bear a stamp) along with the Bill of Lading and other documents, and by the following mail duplicates of all the documents will be sent.

The bill is termed a documentary bill, because it has attached to it the shipping documents, *viz.*, the bill of Lading, Insurance Policy, Invoice etc., referring either to the import or export of certain goods in respect of which it is drawn. The following is a specimen of a documentary bill, which will be drawn by the exporters :—

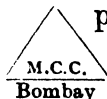
London, 3rd July, 1940.

£248-11-5.

Stamp 3s.
-----------

Thirty days after sight, pay this first of exchange (second and third of the same tenor and date unpaid) to our order, the sum of two hundred forty eight pounds, eleven shillings and five pence,

value against 126-130 5 cases of cycles and accessories marked per ss. "Rajputana".



Shipping documents attached to be surrendered on acceptance.

Hamilton & Co.

To

Messrs. Midland Cycle Co.,  
Meston Road,  
Cawnpore.

### **Securing delivery of Shipping Documents.**

On receipt of a letter of advice relating to the shipment from the exporter, the importer will arrange to obtain the bill of lading and other documents relating to the shipment for securing delivery of the goods.

In due course the Cawnpore branch of the National Bank of India, Ltd., will receive the bill from their head office along with the shipping documents. At the same time the importers, the Midland Cycle Co. will receive a letter of advice from the exporters informing them that the goods have been shipped, and that the shipping documents attached to the bill of exchange for the invoice value will be handed over to them on their accepting the said bill as arranged. The importers will then secure the documents from the Bank after accepting the documentary bill, which is marked D/A.

## **Clearing the Goods at the Port.**

The importers on receiving the documents from the Bank will endorse them and forward them to a clearing agent at the port of Bombay, instructing him to arrange for the landing of the goods, complete the Customs formalities, and despatch the goods by rail to Cawnpore. On arrival of the ship carrying the goods, the clearing agent will apply to the local agent of the carrying vessel for an endorsement for delivery on the bill of lading. The agent of the vessel will endorse the bill after recovering the freight, if not already paid by the exporter, and any other charges that may be due to the shipping company.

**Bill of Entry.** The next step which the clearing agent will have to take is to fill up a Customs Bill of Entry form in triplicate and to present it to the Customs authorities, who will assess the import duty on the goods and declare them to be free in case they are liable to duty. Full details as to the value, quantity and description of the goods must be clearly stated in the form as shown in the specimen Bill of Entry form, which appears on the next page. Different forms of Bill of Entry are used for free, dutiable and re-exportable goods. The form used for "free goods" is known as the "Entry for free goods" form. If the goods are dutiable, the entry form to be used will depend on whether the goods are for home use or for re-export. In case of goods for "home use" an Entry form called "Entry for Home Use Ex-ship" is used. This

## ORIGINAL

## BILL OF ENTRY for Consumption.

Dalal No.      Signature

Vessel.	General Manifest No.	Master or Agent.	Colours.	Port of Shipment.	Country whence Consigned.	Importer's Name	Address
<i>Rajputana</i>	146	<i>P. &amp; O.S.N.Coy.</i>	<i>British.</i>	<i>London.</i>	<i>England.</i>	<i>Midland Cycle Co.</i>	<i>Fort Bombay</i>

## PACKAGES

DETAILS OF GOODS TO BE GIVEN SEPARATELY FOR EACH CLASS OR DESCRIPTION.

Number and Description	Marks and Numbers.	Quantity.		Description.	Real Value as defined in the Sea Customs Act.			Value on which Duty is assessed.			Duty.	
		Unit	Amount		Rate.	Amount.	Tariff	Ad. Val.	Amount.	Rate.	Amount.	
5 Cases <i>Cycles etc.</i>	<i>M. C. C. Bombay</i>	5 Cases	<i>P. enter weight from invoice</i>	<i>Cycles &amp; accessories</i>		Rupees.			Rupees.			a.
						<i>To be fill ed by</i>	<i>Customs.</i>	<i>Dept.</i>				

Total value Rupees.....

Total No. of Packages (in words).....

G. M. Clerk.

Total Duty Rupees.....

Index No. 141

*For use in Cash  
Department*

## ORDERS.

of 7th July  
1940COURT  
FEE STAMP

1. \*This Bill of Entry is presented subject to the Prior to Entry rules.
2. \*For the purpose of sec. 37 of the S. C. A. it is expressly agreed that it shall be deemed to be delivered on the date when the order for inward entry is passed, and the Bill of Entry shall in fact be so deemed to be delivered.

3. We hereby declare the particulars given above to be true.

4. We hereby declare that I am unable from want of full information to state the real value and contents of the packages above marked and pray that they may be opened and examined in the presence of an Officer of Customs.

\* (This declaration to be struck out if not required.)

Bombay,

(Sd.) Dave &amp; Co.,

Signature of the Importer or his  
Authorised Agent.

.... May 1940

form is known as "Entry for Consumption" in India. When the goods are intended to be re-exported, a special form called the "Entry for Bond" is used.

On payment of the duty the goods will be declared out of Customs charge, and two of the Entry forms submitted will be returned to the importer. One of these will be the receipt for duty paid and the other the bill of entry. As soon as the goods are landed, the *Clearing agent* will examine them, and if he finds them to be damaged in any way, he will at once report in writing to the agent of the vessel, who will then arrange for a survey. The damage, if any, will be ascertained, and a claim will afterwards be submitted to the insurance company, with whom the shipment is insured.

**Bill of Sight.** When the importer or his agent has no definite information about the description, quantity and value of the goods, which have arrived, he has to fill up a statement called the Bill of Sight, giving all the information which he possesses. The Bill of Sight will also contain a declaration by the importer or his agent to the effect that he is not able fully to describe the goods from such information as he possesses. The Bill of Sight enables the importer to examine the goods in the docks in the presence of the Customs officer. By virtue of the Bill of Sight the goods are allowed to be provisionally landed and after examination of the goods and comparison of the details with the Bill of Sight it is ascertained whether they are dutiable or not.



**Dock Dues.** Before the goods can be cleared from the Docks the importer or his agent must fill up another form called the Dock Chalan Form and pay all charges that may be due to the Dock authorities. When all the duties and dues have been paid, the Dock authorities will allow the goods to be passed out of Docks on surrender of of the Bill of Lading duly endorsed.

**Delivery of the Goods.** When the import duty and the dock dues have been paid and the bill of lading surrendered as indicated above, the delivery of the goods may be taken by the importer or his agent. If the delivery is not taken within the time prescribed demurrage has to be paid for the delay.

**Separate Delivery Orders.** Sometimes big importers at the ports do not take delivery of the goods themselves, but sell the goods comprised in the bill of lading to several merchants, to whom delivery of the goods must be made from the Docks. The bill of lading in such cases will be sent to the Dock authorities, with instructions that the goods mentioned therein may be delivered to the holders of separate delivery orders issued by the importer.

### **Warehousing.**

When the importer does not like to pay the duties till the goods are sold, he may keep them in the Bonded Warehouse, for which application is to be made to the Customs authorities. A special Bill of Entry form as explained before, is

used for this purpose. The goods are then warehoused under the supervision of the Customs department. They cannot be removed from the Bonded warehouse, until the duty is paid by the importer.

There are also what are known as *duty-paid warehouses*, where merchants not possessing their own godowns, may store goods until they are actually required for consumption or sale. These warehouses belong to the port authorities, and as the rent charged is moderate, many people take advantage of them.

**Dock Warrant.** When the goods are warehoused the importer obtains a receipt from the warehouse keeper. The receipt is issued in the form of a dock warrant, or several warrants may be issued, each representing a certain quantity of the goods, which may be known as one "lot" on the brokers' catalogue for sale. A dock warrant bears a stamp and can be transferred by endorsement and delivery. The dock warrant duly endorsed, must be produced for obtaining delivery from the warehouse.

**Delivery Order.** When a dock warrant has not been issued, the warehouse keeper will deliver the goods to any person on receipt of the owner's delivery order, which is nothing but an order addressed to the warehouse keeper to deliver the goods to the person named. It is a negotiable instrument like the Dock Warrant.

### **Despatch of Goods by Rail.**

The Clearing Agent, in our example, after taking delivery of the goods from the Shipping

Company, will forward the packages to Cawnpore by rail direct from the docks. The railway receipt together with a copy of the bill of entry and the dock receipt and a bill of charges for clearing will be sent to the importer with a letter of advice. All ports are now connected by railways, which bring the exportable goods direct to the ports and which can take the imported goods direct from the ships, if they are to be despatched to an inland town. This avoids the necessity of removing the goods to the warehouse or to one of the railway stations in the port towns.

### **Delivery of Goods at Destination.**

On receipt of the Railway Receipt from the Clearing agent, the importer at Cawnpore will hand over the same to the Railway authorities duly endorsed and take delivery of the goods after paying the freight and the Octroi duty, which is nowadays collected at the station by the Railway company on behalf of the Municipality of the place. The importer will then send a cheque to the clearing agent in full settlement of his dues, and the whole import transaction will thus be completed.

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## **TEST QUESTIONS.**

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1. What is an Indent? What particulars does it contain?
2. What is a Bill of Lading? When and by whom is it issued? What particulars does it contain?

3. What is a documentary bill, and what are the documents attached to it? Why are these documents attached to the bill?

4. What are the essential features of the Bill of Lading? Is it a negotiable instrument?

5. What particulars are generally embodied in an export invoice? What purposes does it serve so far as Customs authorities are concerned?

6. Describe the steps which an importer has to take in order to take delivery of the imported goods.

7. Why is insurance of goods very essential in sea-borne trade? Mention two kinds of policies under which a shipper can insure his goods.

8. What purposes do the following documents serve in connection with shipment of goods:—

(a) Bill of Entry; (b) Dock Warrant; (c) Insurance Policy; (d) Consular Invoice.

9. A merchant of your town wishes to import certain goods from Japan. Explain briefly the procedure he will have to follow in order to secure these goods.

10. Assume that you are carrying on trade in piece-goods in Bombay under the style of Krishna & Co. You have received quotations from Alfred & Co., Manchester, and want to place an order with them. Make out an indent, giving shipping instructions and other necessary particulars.

11. Retail Merchant—Sirkar & Co., Allahabad.  
Mercantile Agents—Brownlow & Nelson, London.

(a) Draft an indent for an assortment of shoes (with details of at least six items).

(b) Draft an invoice, including charges for commission, packing, cartage, dock charges, insurance, freight and primage. (4 cases are used 4' by 4' by 3'6").

Cases are charged at 4d. per cubic foot. Freight is 40s. per ton and 10% for primage).

- (c) How would you arrange for insurance ?
  - (d) Is a certificate of origin or consular invoice necessary ?
  - (e) Draft a First of Exchange in complete form and show modification in the wording of the Second of Exchange.
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## CHAPTER VII.

### EXPORTING.

The export trade of India is carried on both by Indian and foreign merchants. A number of export houses are engaged in export business either on their own account or on account of merchants who engage them as export agents. Produce as well as manufactured goods are carried to the ports from their places of production in the interior by rail or other means of transport and are then exported to foreign countries.

We shall now explain the procedure connected with exportation of goods to foreign countries. The process will be almost the same as has been outlined in connection with the import trade, but the direction will be reversed. We will suppose that Messrs. Mukerji & Co., of Calcutta wish to export a consignment of jute to England. The procedure necessary to complete the transaction will be as follows :—

1. **The Indent.** The first step in an export transaction is the receipt of an indent which may be the result of previous correspondence between the parties regarding price etc. If there are regular dealings between the parties the order may be the first step in an export transaction. The indent, as we have seen in the previous chapter, is the term used for an order received from a foreign country. It contains the particulars of the goods ordered and the terms and conditions for its execution.

Indents are of two kinds—*open* indents and *closed* indents. An open indent is one in which the selection of the goods is left to the exporter, while a closed indent is one which gives full particulars about the goods required and often mentions price, brand and the name of the manufacturer.

2. **Collection of goods.** The shipment will probably consist of the goods lying in the exporter's godown, having been received according to his order from an upcountry station by rail or other means of transport. If the goods are not in stock, they will have to be obtained by placing orders with the suppliers.

3. **Packing and marking.** When the goods are duly collected, steps will have to be taken for their packing and marking for the purpose of shipment. The indent usually contains instructions regarding packing and marking and it is essential that they be strictly observed. If the packing is defective and goods are damaged as a result thereof, the loss will fall on the exporter. Where no instructions are given, the custom of the particular trade for that class of goods must be observed. In order to facilitate the loading and unloading the packings must not be too bulky and, as the freight is payable by measurement of the consignment, the maximum quantity must be packed in the minimum space *e.g.*, jute and cotton bales.

A distinctive mark and number together with the port of destination, should be written

or stamped by stencil on each package. The measurements should also be marked on the outside. In some cases, the gross weight, tare and net weight are also given on the packages. The marks usually consist of simple initials of the importing firm and the number of the indent. The use of these marks greatly facilitates the recognition and storing of goods on arrival at the port of destination.

**4. Despatch by rail to port.** When the exporter does not reside at the port town the packages duly marked and labeled will have to be sent by rail or other means of transport to the port of shipment for export. If sent by rail, the railway receipt will be in favour of the party who will make arrangements for the shipment.

**5. Forwarding Agent.** If the exporter happens to live at the port of shipment, the formalities connected with the shipment at the port may be gone through by his own men. But if he lives in an upcountry town he will have to avail of the services of a Forwarding Agent to perform the services necessary for arranging accommodation with the shipping company and insuring the goods. Forwarding Agent charges commission for his services. An advice note will have to be sent to the Forwarding Agent containing particulars of the name of the steamer, destination, measurement or weight and value of the goods.

**6. Customs Entry and Shipping Bill.** The exporter or his agent will then apply to the Customs



authorities for permission to export the goods. The Government puts restrictions on the exportation of certain goods and in times of war such restrictions apply to various commodities. This permission is known as Customs Permit.

Before shipping the goods the exporter will also have to complete a Shipping Bill (reproduced on the next page) declaring the quality, description and value of the goods to be shipped. The Shipping Bill when filled up and signed by the exporter or his agent and countersigned by the Customs officer, is a permit for allowing the shipment of goods enumerated therein. The Shipping Bill requires a stamp duty of one anna. There are several forms of Shipping Bill, printed in different colours for free, dutiable and coastal goods. The main purpose of a Shipping Bill is to enable the Customs authorities to levy the export duty (if any) on the goods exported and also to provide statistical information regarding the sea-borne trade of the country.

**7. Freight and Shipping Order.** After having obtained the *Customs permit*, the exporter or his agent will make arrangement with the shipping company for the carriage of the goods to their destination. The terms of freight may be arranged either direct with the agent of the shipping company or through a freight broker.

When the terms of freight are settled, a pass is granted by the agent of the ship by which the goods are to be shipped. This pass is known

From Bond

Dalal's No.

Signature

Indian Produce.


Free Goods.**SHIPPING BILL for**

Original.

Foreign produce to be re-exported

Exporter's Name *Mukerji & Co.* Address *Calcutta.*

Port of Calcutta.

Name of Vessel.		Masters or Agents		Colours		Port at which goods to be discharged		Remarks
<i>Arabia</i>		<i>Mackinnon Mackenzie &amp; Co.</i>		<i>British</i>		<i>London</i>		
Packages		DETAILS OF GOODS TO BE GIVEN SEPARATELY FOR EACH CLASS OR DESCRIPTION.						
Number and Description	Marks and Numbers	Quantity		Description	Value			Country of final Destination
		Unit	Amount		Rate	Amount		
		Rs.	a.	p.	Rs.	a.	p.	
100 Bales	 <i>B &amp; Co.</i> <i>London</i> 1/100				Bales of Jute	..	..	England

Enterer

No.

194

Let Export under Preventive Supervision.

I W<sub>e</sub> hereby declare the particulars given above to be true.

Calcutta, 25th June, 1940.

Assistant Collector of Customs.

Signature of Exporter or his Authorised Agent,

**N.B.**—Export shipping Bills shall be presented by shippers in duplicate.

The original of these will be taken with the first boat load of each consignment to the ship and delivered to the master, who will keep it until the loading of the vessel is completed; and at the time of applying for Port clearance deliver all such Export Shipping Bills, duly endorsed to his having received on board the quantity covered by these bills, with the Export Manifest in duplicate as usual.

The Duplicate will remain at the Customs House.

Vessel's name may be altered.	Vessel's name may be altered.
Fee one Rupee	Fee one Rupee.
194 . Assistant Collector	194 . Assistant Collector.
Fee received	Fee received
Cashier.	Cashier.

After check with the original.

Entry for

Fresh one may be granted for the  
Portion shut out or not shipped  
Fee one Rupee.

194 . Assistant Collector.

No.

# FOR MEASUREMENT AT PORT AND COLLECTION OF MEASUREMENT FEE.

CALCUTTA	194 .	Rs. a. p.
Measurement fee on	bales levied .. ..	
	Signed	
		Measurement fee Clerk.
		Contents received on board
	(Signature.) .....	
		Master of the Vessel.

as the Shipping Order, and is the authority for the master of the ship to allow the goods to be loaded on board.

8. **Dock Dues.** After taking the export Shipping Bill duly signed by the Customs authorities and the Shipping Order from the agent of the carrying vessel, the exporter or his agent will apply to the dock authorities for permission to cart the goods into the docks. This permission having been obtained, the goods will be brought to the docks or jetties, where they will be unloaded and received for shipment by the dock authorities. The dock charges will have to be paid before the goods can be loaded on board.

9. **Mate's Receipt.** The goods will then be shipped by the dock authorities and received on board the ship by its officers. The packages will be counted or tallied by both the dock officer and the ship's clerk and the condition of the goods noted in the presence of the representative of the exporter, who will assent to or protest against the remarks which the ship's officers may desire to pass on the condition of the packing etc. An officer of the Customs is also present when the loading takes place, in order to see that no goods are exported beyond those mentioned in the Shipping Bill.

When the process of taking the goods on the ship is over, a receipt for them, called Mate's Receipt, is given by the ship to the dock authorities. A Mate's Receipt is said to be clean when it certifies the goods received to be in good condition.

On the other hand, if the cases are broken, packages stained or wet, wrappers of bales torn, edges bent, bundles loose, etc., a remark to that effect is made in the receipt, in which case it is called a *Foul Receipt*. It is necessary that a *Clean Mate's Receipt* should be obtained, as otherwise the *foul* clause will be inserted in the Bill of Lading and the importer on seeing that clause might refuse to take the delivery of the goods.

### MATE'S RECEIPT FORM.

Calcutta, 25th June, 1940.

No. 251.

Received on Board the ss. "Arabia" from Messrs. Mukerji & Co. the undermentioned merchandise, in good order and condition under Shipping Order, dated 22nd June, 1940.

Marks	Quantity	Description
B. & Co. London 1/100	100	Bales of Jute

10. **Bills of Lading.** When the goods have been shipped on board the steamer, it becomes necessary to bind the captain for their safe delivery to the consignee at the port of destination. Accordingly, a set of "Bills of Lading" in triplicate is made out and signed by the

captain. Blank forms of the Bill of Lading are obtainable from the agents of the vessel free of charge, but they are chargeable with a stamp duty of annas four each. The captain before signing the Bill of Lading, will collect the Mate's Receipt and in exchange thereof, will deliver the signed documents to the shippers. Any remark in the Mate's Receipt will appear in the Bill of Lading.

### FORM OF THE BILL OF LADING.

B. & Co. 1—100  Measuring tons 30 @ £ 1 15s. per Ton of 50 C. ft.	SHIPPED in good order and condition, by <i>Mukerji &amp; Co</i> , on board the Steam Ship " <i>Arabia</i> " whereof her master for this present voyage <i>Cooper</i> lying in the port of <i>Calcutta</i> , and bound for <i>London</i> say <i>100 bales of Jute</i> , being marked and numbered as in the margin, and are to be delivered in the port of <i>London</i> , or so near thereto as she may safely get, unto <i>order</i> , or to his or their assigns, on payment of freight for the said goods in cash, as per margin in <i>London</i> . Average as customed.
--	---

The following are the exceptions and conditions above referred to :—

Weight, measurement, quality, contents and value unknown. (The act of God; king's enemies, fire and all other dangers and accidents of the sea, and navigations of whatever nature and kind excepted).

In witness whereof, the master or agent of the said ship has signed *three* Bills of Lading

exclusive of the Master's copy, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated at *Calcutta*, 30th May 1940.

Not accountable for number and counter marks.

Mackinon Mackenzie & Co.

**Charter Party.** When a shipper has sufficient cargo to fill a ship he sometimes hires a vessel for the particular voyage, the agreement between the owner of the vessel and the shipper being contained in a document known as a *Charter Party*. The charter party contains the name and description of the vessel, the time or voyage for which she is hired, the rate of freight and terms of payment; the nature of the cargo, condition of loading and the number of lay days (*i.e.* days allowed for loading). If a ship is detained beyond the lay days allowed, the shipper has to pay an extra charge, known as Demurrage. Freight is usually calculated at so much per ton, and if the ship is not fully loaded, the charterer, *i.e.* the merchant hiring the vessel has to pay the difference between the total agreed freight and the actual freight on the cargo shipped, and this is termed *Dead Freight*.

**11. Insuring of Goods.** Before the goods can be despatched they must be insured against risks at sea. The procedure necessary for insuring the goods has already been explained in connection with import trade and need not be repeated

here. The insurance will be effected by the forwarding agent, who will obtain the policy from the insurance company and send the same to the exporter.

**12. Forwarding Agent's Advice.** When the goods have been shipped and the shipment is attended to by the Forwarding agent, the Forwarding agent will prepare a statement of his charges, incurred in connection with the shipment together with his commission. This will be forwarded to the exporter with a covering letter. Two or three copies of the Bill of Lading (as the case may be), the marine insurance policy and a copy each of the shipping bill and dock chalan will be enclosed with the letter of advice.

**13. Preparing the Invoice.** After having received the Bills of Lading and the insurance policy, and having paid the Forwarding agent's charges, if employed, the exporter will prepare the export invoice, giving the name of the vessel, the marks and numbers of the cases together with the charges for packing cases, cartage, freight, primage, bills of lading, dock dues and insurance premium. The form of the Export Invoice has already been given under import procedure in the previous chapter.

**Consular Invoice.** In addition to the ordinary invoice the importer of the goods may require the exporter to get consular invoice from the Consul of importing country residing in India. The exporter has to fill up a form, obtainable from the Consulate office in the exporting country,



giving all the necessary details about the shipment, and swear a declaration about their accuracy before an authorised officer. This invoice is prepared in triplicate, two copies being kept in the Consulate office and one handed over to the exporter who sends the same to the foreign importer. The Customs authorities of the importing country, on receipt of the invoice sent by the said consulate to them assess the customs duty on the basis of the declaration made therein.

**Certificate of Origin.** Along with the invoice, a certificate of origin is also sent to the importer of a country which is entitled to preferential treatment. The object of such certificate is to enable the consignee to avail himself of the preferential discrimination regarding the goods coming from any favoured country according to the tariff regulations. A lower duty is charged on goods coming from a favoured country than that charged on goods from another country. The certificate contains a declaration by the exporter that the exported goods are the product of his country. This declaration has to be attested before some recognised officer *e.g.* the Secretary of a Chamber of Commerce.

**14. Securing Payment.** When the shipment has been made and the necessary documents including the invoices are ready, the exporter will take steps to re-imburse himself for the outlay and commission (if the shipment is made by a commission agent). This he will do, under the condition of the order, by drawing a bill of exchange either on the importer or upon some bank,

with whom the importer has made the necessary arrangement. The bill of lading, insurance policy and a copy of the invoice will be attached to the B/E, which will be sent to the importer through some exchange Bank having an office in the importer's country. The bill may be either D/A or D/P, in accordance with the previous arrangement. The nature and form of such a bill has already been given in the previous chapter.

It may be pointed out that majority of the export bills from this country are drawn in sterling *i.e.* £. s. d., for the convenience of the foreign importers as well as the Exchange Banks, which purchase them from the exporters. The bills in English currency can be easily re-discounted in London, after acceptance by the drawees, in case the Exchange Banks stand in need of money before their date of maturity.

**Letter of Hypothecation.** The bank advancing money on a documentary bill, usually requires the exporter to sign a Letter of Hypothecation addressed to the bank, and to attach it with the shipping documents. The Letter of Hypothecation is a document conveying to the bank full right and title to any goods in respect of which it may have given advances. It contains the particulars of the bill drawn and of the goods against which it is drawn. It gives the bank full authority to store and insure the goods and to pay freight thereon to the debit of the customer, and to sell the specified goods if the drawee either refuses to accept the bill, when it

is presented to him or fails to honour it at the due date.

The following is a specimen of a letter of Hypothecation :—

15, Clive Street,  
Calcutta, 30th May, 1940.

The Agent,  
National Bank of India Ltd.,  
Calcutta Branch.

Dear Sir,

We enclose herewith 30 days sight bill drawn by ourselves on Messrs. Banbery & Co., London, for £ 300, and as security forwarded with the said bill, the shipping documents for the following goods :—

Invoice for 100 bales of Jute valued at £ 300.

Policy of Insurance F.P.A. for £ 350 payable in London.

Bill of Lading for 100 bales of jute marked



London.

1/100 per s.s. "*Arabia*".

From Calcutta to London.

Freight on which is paid by ourselves.

These documents are to be given up on payment of the bill. If the said bill should suffer dishonour, we hereby authorise you to cause the said goods to be sold, and such sale being for our account, at our risk and subject to the usual charges for commission and all incidental expenses.

Against the above please advance 90% at current rate of exchange as arranged.

Yours faithfully,  
MUKERJI & Co.

**15. Letter of advice to the importer.** The last thing that is needed to complete the export transaction is a letter of advice to the importer, informing him of the shipment of the goods and the drawing of the draft. A copy of the export invoice is enclosed with the letter of advice for the information of the importer. It should, however, be noted that many orders are settled without the use of bills of exchange. In such cases the shipping documents are usually sent direct to the importer.

### **EXPORT ON CONSIGNMENT BASIS.**

A large bulk of India's trade with England takes place on consignment basis. Under such an arrangement goods are sent by an individual or exporting firm to a foreign agent with the intention that the latter should sell them for the best possible price, and remit the proceeds after deducting his expenses and commission, to the sender. The person sending the goods on consignment is called the *consignor* and the person to whom the goods are sent is called the *consignee* and the term consignment refers to the goods which are sent. The consignee gets a commission for his services at the agreed rate.


The goods sent on consignment basis do not become the property of the consignee as he is not the buyer. His only interest in them is that he is employed to arrange the sale and to give an account thereof to the foreign owner. The consignee incurs no liability other than the obligation to exercise reasonable care in their storage and sale and to remit the proceeds, less his charges and commission to the consignor.

Consignment business is more common in our export trade with the United Kingdom, especially in food-stuffs and raw materials than in import trade. This is perhaps due to the fact that there is a steady demand for them in the English markets, providing employment for brokers and other intermediaries, who arrange their sale at the produce markets on foreign account. The reputation and connection built up by the import merchants and the efficient arrangement of the English produce markets induce our exporters to ship their goods to be sold at these markets.

When goods are sent for sale on consignment a *Pro Forma Invoice* is prepared by the consignor and sent to the consignee and this serves to show what the shipper has paid for the goods by way of cost and charges and what he expects to receive for them. For the sake of illustration, let us suppose that Latifi & Co. of Madras have sent a consignment of 50 chests of Pekoe Tea to Wilson & Co., London, for sale on Commission. The *Pro Forma Invoice* will be somewhat as follows :—

**PRO FORMA INVOICE.**

Invoice of 50 Chests of Orange Pekoe Tea, shipped per s. s. "Arabia" for London consigned to order for sale on account and risk of the undersigned.

Mark	Chests	Each	Net Lbs.	Rs.	as.	p.
	50	95 lbs.	4750 @-/8/- per lb.	2,375	0	0
		Shipping Charges	..	105	4	0
		Freight	..	365	8	0
		Insurance	..	7	8	0
				2,853	4	0
			25th May, 1940.	LATIFI & Co.,		
			<i>Basum Kumar Mohla</i>	Madras.		

On arrival of the consignment, Wilson & Co., will attend to the Customs formalities at the port of London, and allow the chests to be placed in a Bonded warehouse. They will then give instruction to a firm of brokers to sell the consignment at the London Produce Exchange. When the consignment is sold Wilson & Co., will receive a *Contract note*, showing the prices at which the sale has been effected by the brokers. The amounts due from the buyers will be paid to the importers, Messrs. Wilson & Co., *prompt* or at the due date, whilst the brokerage and expenses will be paid to the broker immediately. On the sales being completed the consignees will charge all the expenses incurred by them together with interest thereon, and their commission on the gross sale proceeds to the account of the consignees.

A statement called the Account Sales (A/S) will then be prepared by Messrs. Wilson & Co.,



net weight is ascertained by deducting the Tare and Draft from the gross weight. It is upon this weight that the price is calculated. Gross weight is the weight of the goods and the packing which contains them. *Tare* is the ascertained or agreed weight of the package and packing, and *Draft* is the allowance which is often made over and above the tare in order to compensate the buyer for any leakage in handling and possible mistake in taring etc. This varies with different trades. The measurements in the English Produce Exchanges are in tons, hundredweights, quarters, and lbs. 28 lbs. make one quarter, 4 quarters make one hundredweight and 20 cwts. one ton. The following is a specimen of an A/S giving gross and net weights.

### ACCOUNT SALES (2).

Account Sales of 50 bales of Egyptian Cotton per steamer *Essex* from Bombay, sold for account and risk of Messrs. Manikjee & Co.

M.C. 1/50	50 bales	cwt. qr. lbs. 172 3 8	gross			
	Less	12 3 8	tare and draft		£	s. d.
	Net	160 =	17,920 lbs. @ 6d.		448	0 0
			£	s. d.	448	0 0
	<i>Charges :—</i>					
	Freight		30	12 6		
	Fire Ins.		0	16 4		
	Dock dues		4	6 0		
	Sales Exp.		0	14 3		
	Brokerage $\frac{1}{2}\%$		2	5 0		
	Commission $2\frac{1}{2}\%$		11	4 0	49	18 1
			Net Proceeds £		398	1 11

LONDON:  
25th June, 1940.

E. & O. E.  
JOHNSON & Co.



## TEST QUESTIONS.

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1. What is the difference between an open indent and a closed indent ?

2. Distinguish clearly between a bill of lading and a charter party. What are sea perils for which the shipping company does not accept liabilities ?

3. What is a Mate's Receipt ? Explain the meaning of a "Clean" and a "Foul" receipt.

4. Ram Mohan of Amraoti exports cotton to Brown & Co. of Manchester. Give in brief the procedure he will follow in exporting the goods and enumerate the principal documents that will be used in the course of the transaction.

5. Write explanatory notes on :—

Shipping Bill, Consular Invoice, Letter of Hypothecation.

6. Who is a Forwarding Agent ? When is he appointed and what services does he render to the shipper ?

7. Draw up in proper style and form, an Account Sales for the following produce, shipped from Calcutta per Steamship "City of Exeter" by Bird & Co., and consigned to Roberts & Co., London 250 cwt. Nux Vomica @ 60s. per cwt., 55 cwts. Indigo @ 6d. per lb ; 50 cwts. Bees wax @ 155s. per cwt., 200 tons Cutch @ 85s. per ton. Charges : warehousing and wharfage £ 70 15s., advertising £ 6 10s. ; Brokerage 1%. What amount in Indian money will Bird & Co., receive @ 1s. 5 $\frac{1}{8}$ d. exchange ?

Suppose the terms are cash against documents ; describe (a) what the documents referred to are, (b) how they would reach the London firm. (I. Com. 1927.)

8. Messrs. A. Dalal & Sons of Madras send 24 chests of indigo marked per s.s. "Asia" to Mr. Richard

Jones of London to be sold on account and risk of the consignors, who pay the freight in advance. Prepare an Account Sales with the details given below :—

Date : November 20, 1929 ; net weight 5682 lbs ; sold for 8s. 3d. per lb. ; dock charges £ 6 10s., marine insurance £ 2 1s., and other expenses £ 3 5s. (I. Com. 1930.)

9. A firm of commission Agents in Delhi receives an order from a merchant in London for the supply of 500 bags of Rice. Explain shortly the method of procedure that should be followed by the Delhi firm in executing the order. Each successive stage in the process must be clearly stated, mention being made of all the requisite documents, and the use of each. Assume that the goods are despatched from Delhi. (I. Com. 1922).

10. A trader residing in Delhi wishes to despatch goods to a firm in London against an order for delivery to the latter's godown. Briefly describe how the former should proceed in the matter and what charges he must add to his Delhi price in order to arrive at a price for which the buyer is to be billed. Assume that the amount is to be drawn at three months' sight. (I. Com. 1925).

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## CHAPTER VIII.

### EXPORT INVOICES.

When goods sold are to be delivered abroad, the statement of goods supplied is termed a shipping or export invoice. Such an invoice contains information with regard to the marks, numbers, weights, measurement of packages, shipping charges etc., besides the price charged, together with any other details that may be necessary for the use of the importer. It is drawn up by the shipper and sent to the importer as soon as the goods are shipped, so that it may reach him before the arrival of the goods at the destination. This will serve as a notice to the importer that the goods have been despatched and, if they are not received in due time, enquiry may be made. The headings of export invoices are generally different from those of home invoices, and usually contain a statement that goods have been shipped, the name of the shipper, the name of the steamer, the port of shipment, and the name of the person for whose account and risk the goods are shipped. The port of destination and the number of indent or order are also given.

The charges usually found in a shipping invoice are : Freight, insurance, bills of lading, stamp, packing, shipping charges and commission. The last item will appear where the goods are exported by a commission or exporting agent under instructions from the importer.

Like Bills of exchange and bills of lading, export invoices are usually made out in triplicate and a good deal of calculation is involved in their preparation. Great care should, therefore, be taken in preparing the invoices as they are often required to be submitted to Customs authorities by the importers. If there is any difference between the goods and the statements in the invoice, the importer will be liable to penalty which will, of course, be recovered from the exporter and the inconvenience of which will be very much resented.

The currency in which the export invoices are made out depends upon the custom of trade with a particular country as well as the understanding between the buyer and seller. As most of our foreign trade is financed by English banks and as a large part of this trade (both import and export) is with the United Kingdom, the invoices are generally prepared in sterling *i.e.*, £. s. d.

Invoices in the export trade are made out according to the terms on which the goods have been sold. As we have already seen in the previous chapter, the terms may be *Loco*, *F.O.B.*, *C. & F.*, *C.I.F.*, or *Franco*. Most of our foreign trade is conducted on *F.O.B.* and *C.I.F.* terms.

**Freight.** Freight is usually calculated per ton, per package or *ad valorem* (according to value). The term 'ton' in freight calculation may be either a ton weight of 2240 lbs or a ton measurement of 40 cubic feet. The freight is usually

quoted at so much per ton w. or m. (weight or measurement) and the shipping company has the option of charging the consignment at a rate which will give it the highest return. This means that if the package or packages measure more than 40 c. ft. to the ton weight, freight will be charged on the measurement; if the goods weigh over a ton weight to the 40 c. ft., freight is charged on the weight. For example, if a package measures 30 c. ft. 0 in. and weighs 15 cwt. 3 qr. it will be charged by the weight, as 30 ft. @ 25/- per 40 c. ft. = 18s. 9d., and 15 cwt. 3 qrs. @ 25/- per ton = 19s. 8d. It should, however, be noted that the shipping ton is not of 40 c. ft. in the case of all commodities. In the case of jute for instance, the ton is of 50 c. ft.

To calculate the number of cubic feet etc., in a package the outside measurements are taken and multiplied together, and then the result is multiplied by the number of packages, to obtain the total measurement of the entire consignment. Supposing there is a shipment of six cases, each measuring 4' × 4' × 3'6", the total measurement in cubic feet will be 4' × 4' × 3½' × 6 = 336 c. ft.

To ascertain the amount of freight on any given package, the cubic measurement, as ascertained above, should be converted into tons. Thus, if the rate of freight is 40/- per ton of 40 c. ft. the amount of freight in the above case will be calculated as follows :—

$$(4' \times 4' \times 3'6") \times 6 = 336 \text{ c. ft.} = 8.4 \text{ tons} \\ = \text{£ } 16-16-0$$

But when the measurements are not in even numbers of feet, the calculation is a bit more complex. Thus, if the cases are  $4'3'' \times 3'6'' \times 2'8''$ ; then product would be  $4\frac{1}{4}' \times 3\frac{1}{2}' \times 2\frac{2}{3}' = 1\frac{11}{3} \text{ c. ft.}$  and the measurement of 6 cases would be  $1\frac{11}{3} \times 6 = 238 \text{ c. ft.}$  which is equal to  $\frac{238}{40} = 5.95$  tons.

Freight @ 40/- per ton will be calculated as follows :

£ 5.95 @ 20/- per ton.

£ 5.95 @ 20/- per ton.

---

£ 11.90 = £ 11-18-0.

Freight is usually payable in advance, but sometimes it is payable on arrival of the goods at the destination.

**Primage.** Primage is a customary charge, usually 10 per cent on the freight made by a shipping company on all cargo. Originally it was a bounty payable to the captain for taking care of the goods. Nowadays it is charged by way of addition to the freight and is usually utilised for payments to shippers in the form of rebates.

**Insurance.** Marine Insurance policy is taken for an amount that includes the value of the goods plus all charges. It is usually made to cover in addition a margin of profit to the purchaser. This is done because if the goods are lost at sea his profit on the sale of the goods would also be lost. In some cases the insurance is effected at 10 per cent on the amount of the invoice, as per instructions from the importer. It is effected for round

sums, for instance, if the total value of the goods invoiced, including all expenses, comes to Rs. 2,659-3-9 the insurance would be effected for Rs. 2,660.

**Preparing of Export Invoices.** As we have already stated before, foreign invoices are prepared on Loco, F.O.B., C. & F., C. I. F. and Franco terms as may be settled between the exporter and importer. We shall illustrate these different forms of invoices from the following transaction.

On 15th January, 1940, Messrs. Allen Brothers & Co. of Manchester, shipped the following goods per s.s. *Light of Asia*, to the order of Messrs. Himmat Ram Kripashanker of Bombay :—

Ten cases marked  each con-

Bombay.


taining 50 pieces of grey shirtings @ 12/- per piece of 40 yards. The charges in connection with the shipment were : packing 5s. per case, carriage to port 12s. 6d., Shipping charges 10s. Bills of Lading etc. 3s. 6d. Each case measures 4'6" × 3'8" × 3'4" and freight is to be charged at the rate of 22s. per ton of 40 cubic feet and 10% primage. Insurance is to be effected on £350 at 5s. per cent.

### (1) LOCO INVOICE.

Invoice of ten cases of Grey Shirtings, shipped by the undersigned by s.s. *Light of Asia* from Liverpool, to the order and risk of Messrs. Himmat Ram Kripashanker, Bombay.

Insurance effected here  
as per instructions

Indent No. 174.


		£	s.	d.	£	s.	d.
	10 cases each containing 50 pieces of grey shirtings @ 12 s. per piece of 40 yds.				300		
	<i>Charges :—</i>						
	Packing	2	10	0			
	Carriage to port	0	12	6			
	Shipping charges	0	10	0			
	Bills of Lading etc.	0	3	6			
	Freight on 550 c.ft. @ 22/- per ton						
	15-5-0						
	Primage 10% 1-10-6	16	15	6			
	Marine Insurance on £ 350 @ 5s. %	0	17	6	21	9	0
					321	9	0

*E. & O. E.*

Manchester,  
15th January, 1940.

ALLEN BROTHERS & Co.

(2) F. O. B. INVOICE.

		£	s.	d.	£	s.	d.
	Ten cases each containing 50 pieces of grey shirtings @ 12s. 1½d. per piece f.o.b. Liverpool				303	16	0
	<i>Charges :—</i>						
	Freight and Primage	16	15	6			
	Insurance ( as in Loco )	0	17	6	17	13	0
					321	9	0

*E. & O. E.*

Manchester,  
15th January, 1940.


ALLEN BROTHERS & Co.



Method of Calculation :—

500 pieces of shirtings @ 12/- each	..	=	£	s.	d.
Add Packing	..		300	0	0
„ Carriage to port	..		2	10	0
„ Shipping charges	..		0	12	6
Bills of Lading	..		0	10	0
			0	3	6
Cost of goods on Board	..	=	303	16	0
Cost per piece F.O.B.	..	=	$(303-16-0) \div 500$		
		=	12s. 1½d.		

**(3) C. & F. INVOICE.**


	500 pieces of grey shirtings @ 12s. 9½d. per piece C. & F. Bombay	£	s.	d.	£	s.	d.
					320	11	6
	<i>Charges :—</i>						
	Insurance	0	17	6	0	17	6
					321	9	0
	E. & O. E. Manchester, 15th January, 1940.	ALLEN BROTHERS & Co.					

Method of Calculation :—	£	s.	d.
Cost of goods on Board	=	303	16 0
Add Freight		16	15 6
Total		320	11 6

Cost per piece C. & F. Bombay =  $(320-11-6) \div 500 = 12s. 9\frac{1}{2}d.$

**(4) C. I. F. INVOICE.**

Insurance effected here.

	500 pieces of grey shirtings @ 12s. 10½d. per piece C.I.F. Bombay	£	s.	d.	£	s.	d.
					321	9	0
					321	9	0
					321	9	0
	E. & O. E. Manchester, 15th January, 1940.	ALLEN BROTHERS & Co.					

Method of Calculation :—	£	s.	d.
C. & F. price as above	320	11	6
Add Insurance	0	17	6
	321	9	0

Cost per piece C.I.F. Bombay =  $321-9-0 \div 500 = 12s. 10\frac{1}{2}d.$

A *C. I. F.* Invoice includes all the charges including the amount paid to insure the goods on behalf of the buyer. Invoices of this type are often prepared in the currency of the importer to suit his convenience.

### (5) FRANCO INVOICE.

Franco invoices are generally made out in the weight and the currency of the country to which the goods are exported and include all the charges up to the place of the buyer. These charges as well as import duty levied are obtained from the forwarding agent in the importing country. Such an invoice is very rarely prepared but when required by the importer it will be prepared in the following form :—

Insurance effected here.

<div><div>H.K.</div><div>Bombay</div><div>1/10</div></div>	500 pieces of grey shirtings @ Rs. 9/- per piece Franco Bombay	Rs. ..	Rs.	a.	p.	Rs.	a.	p.
						4,500	0	0
						4,500	0	0
			E. & O. E. Manchester, 15th January, 1940.			ALLEN BROTHERS & Co.		

Method of Calculation :—	Rs.	as.	p.	Rs.	as.	p.
C.I.F. Price of 500 pieces						
£ 321-9-0 (1s. 6d. = Re. 1)				4,286	0	0
Add Import duty & Dock charges	209	12	6			
Cartage	4	3	6	214	0	0
				4,500	0	0

Franco price per piece =  $4,500 \div 500 = \text{Rs. } 9/-$

## TEST QUESTIONS.

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1. Taking a "loco" price as a basis, name what additions would be required to make this into (a) C.I.F. price and (b) a Franco price.

2. A package measures 2 ft. 11 in.  $\times$  2 ft. 3 in.  $\times$  2 ft. 9 in. State what the freight of this package would be at the rate of 35s. per ton of 40 cubic feet, plus 10% primage.

3. Make out an Export Invoice (Loco) for the following goods, sold by Henry Croft & Co., Manchester, to S. P. Dalal & Co., Bombay :—

8 cases, containing 45 pieces each 34" white shirtings (pattern No. 256) @ 6s. 6d. per piece, packing 6s. per case; carriage to Liverpool 15s. and freight @ 22s. per steamer ton and 10% primage. Each case measures 3'2"  $\times$  2'4"  $\times$  1'11". Marine insurance F.P.A. 3s. 6d. % for 10% over the invoice value. B/L and charges 4s. 9d. shipped from Liverpool per s.s. "Marquiss".

4. If you are prepared to sell 5,000 yards of white shirtings ex-warehouse Bombay at 10 annas a yard, what price per yard would you quote to a South African buyer C.I.F. Durban, if packing the goods in 10 cases containing 500 yards costs Rs. 24/8/-; carriage to docks Rs. 7/4/-; dock charges Rs. 17/6/-; B/L and stamps Rs. 2/8/-; Freight Rs. 228/10/- plus 10% primage and if insurance could be effected at Rs. -/8/6%?

5. Make out a C.I.F. invoice for the following, also invoices for the same goods C. & F. and F. O. B., supplying your own details.

15 doz. White Cotton Turkish towels @ 6s. 6d. per doz.

36 doz. Cairo Cotton Turkish Towels @ 25s. 3d. per doz.

28 doz. Grey Sultan Cotton Turkish Towels @ 17s. 9d. per doz.

2 pieces Grey Cotton Rolling=43 yds. @ 7½d. per yard. packed in five cases, total weight, 20 cwt. 1 qr.

Carriage to docks @ 35s. per ton; dock charges, 14s.

9d. ; B/L 2s. 6d. ; Freight £ 25 18s. ; insurance @ 15s% on the value declared.

6. Make out an export invoice (c.i.f.) for the following goods sold by Allen Brothers & Co., Ltd., London, to Bisessar Lal Moti Lal, Cawnpore ; 10 cases 60 pieces each 36 inches Nainsookh pattern No. 481 @ 10s. 6d. per piece less  $2\frac{1}{2}\%$  discount. Packing 10s. per case, freight @ 50s. steamer ton (40 cubic ft). and 10% primage. Each case measures 3 ft. by 2 ft. by 1 ft. 10 inches. Shipping charges £ 1, postages and Bill stamps 3s. 6d. B/L 6d., Insurance at 4s.%. (I. Com. 1925).

7. Make out an export invoice for the following goods sold by Bishop & Sons, London, to Visram Brothers, Bombay ; Date 10th August, 1925. Shipped per s.s. "City of London" from Liverpool ; 6 c/s each containing 40 bleached Mull—

12,240 yards at  $6\frac{3}{4}$  per yard : cases marked

△  
V.B.

Bombay.

The tin and woodlined cases are charged 10s. each. Each case, measures  $3'0'' \times 1'10'' \times 3'2''$  and freight is charged at the rate of 22s. 6d. per ton of 40 cubic feet at 10% primage. Marine Insurance is to effected (on 10% above the invoice value) at 3s. 9d.%. Assuming the clearing and landing charges at Bombay to be Rs. 10/12/- per case, and the duty to be  $2\frac{1}{2}\%$  at what rupee price per yard should Visram Brothers sell the goods in order to make a profit of 10% on their total outlay ? (Exchange—1s.  $6\frac{3}{4}$ ). (I. Com. 1926).

8. Make out a shipping invoice from the following particulars :—

Consignors : Alfred & Co., Manchester. Consignee  
Vithal Das Gopaldas & Sons, Bombay. 5 c/s each measuring  
 $3'3'' \times 2'9'' \times 3'$  marked

△  
V.G.S.  
Bombay

71/75 shipped per s.s.

"Light of Asia" Contents : 70 pcs. Greyshirtings per case each 40 yards, at  $3\frac{1}{2}$ d. yard ; Charges : packing, 10s. per case ; freight @ 21s. per ton (40 cubic feet) plus 10%. Shipping charges, 10s. B/L 6d., Insurance at 5s. on 10% above invoice value. Date : 20th January, 1940. (I. Com. 1929).

## CHAPTER IX.

### A TYPICAL TRANSACTION IN FOREIGN TRADE.

**Buyers :—**Messrs. Bankey Behari Lal Debi Singh,  
Generalganj, Cawnpore.

**Sellers :—**Messrs. Simpson Brown & Co.,  
Cardigan Lane, London, E.C.

**Manufacturers :—**Messrs. Nixon & Co.,  
Paper Manufacturers, Birkhampstead.

### SUMMARY.

The buyers place an indent for paper which is to be shipped as early as possible by steamer. The sellers send the order to the manufacturers of paper. In due course the paper is ready for shipment and Messrs. Simpson Brown & Co., are advised of the fact. Instructions for shipment are then forwarded and the shipping agents are communicated with as to the shipment. The manufacturers advise despatch of the goods and enclose their invoice. Insurance is effected against the sellers, open policy and as the price charged is f. o. b., the cost of insurance and freight is added to the export invoice. A draft at 90 days sight is drawn for the invoice amount, and negotiated, with documents attached, through the National Bank of India, Ltd. A letter advising shipment is sent to the buyers.

On receipt of the letter of advice, the buyers arrange to obtain the shipping documents from the

Cawnpore branch of the National Bank, Ltd., by accepting the documentary draft.

The shipping documents are then sent to a firm of clearing agents at Bombay, with instructions that they should attend to the Customs formalities for clearing the goods on their behalf, and forward the same by rail to Cawnpore. The clearing agents forward the goods to Cawnpore and enclose the R/R (Railway Receipt) with a letter advising despatch. On arrival of the goods the buyers take delivery of the goods after paying the railway freight and *octroi* duty which is collected by the Railway Company on behalf of the municipality.

### DOCUMENTS AND CORRESPONDENCE.

(1) Letter covering indent ; (2) the Indent ; (3) Exporter's order to manufacturers ; (4) Forwarding instructions to manufacturers ; (5) Letter giving instructions to forwarding or shipping agents at port ; (6) Letter advising despatch of goods by manufacturers ; (7) Manufacturers' invoice to exporters ; (8) Letter from Exporters to Manufacturers enclosing cheque in settlement ; (9) Letter from shipping agents advising shipment ; (10) Particulars for B/L ; (11) Letter advising insurance against open policy and particulars thereof ; (12) Export Invoice ; (13) Documentary Draft ; (14) Letter to bank enclosing documents ; (15) Letter advising shipment to the importers ; (16) Letter from Bank advising arrival of shipping documents ; (17) Importers instructions to clearing agents ; (18) Letter from clearing agents advising despatch and enclosing bill.

**1. LETTER COVERING ORDER.**

Generalganj,  
Cawnpore,  
1st February, 1940.

Messrs. Simpson Brown & Co.,  
Cardigan Lane, London, E.C.

Dear Sirs,

We beg to enclose herewith an indent for printing paper which we hope will receive your immediate attention.

We trust there will be no delay in the execution of this order. Our stock of this particular grade of paper has run short and delay might cause us serious inconvenience.

Yours faithfully,  
BANKEY BEHARI LAL DEBI SINGH.

**2. THE INDENT.**

Order No. 295.

Generalganj,  
Cawnpore,  
1st February, 1940.

Messrs. Simpson Brown & Co.,  
Cardigan Lane, London, E.C.

Dear Sirs,

Please forward as directed the goods indicated below and draw on us as usual a Bill of Exchange at 90 days sight.

Yours faithfully,  
BANKEY BEHARI LAL DEBI SINGH.

150 Reams of White printing paper No. 2250.

18×22      14 lb.

500 sheets.

Pack in bales of about 5 cwt. each. Ship as soon as possible. Forward by steamer from London.

### 3. Order to Manufacturers.

Cardigan Lane,  
London, E.C.  
15th February, 1940.

Messrs. Nixon & Co.,  
Paper Manufacturers,  
Birkhampstead.

Dear Sirs,

Please supply the undermentioned for export. The goods supplied should conform to the particulars stated and they should be carefully sealed and packed for export in bales.

The contents, measurement, and gross and net weights of each package should be stated. Packages to be marked and numbered as per shipping instructions which will be supplied later.

Reams :	150
Description :	White Printing
Size :	18×22
Weight :	14 lbs.
Sheets :	500
How packed :	Flat
Price :	1½d.

Yours faithfully,  
SIMPSON BROWN & Co.



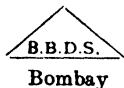
**4. Instructions for Forwarding to Manufacturers.**

Cardigan Lane,  
London, E.C.,  
*20th February, 1940.*

Messrs. Nixon & Co.,  
Paper Manufacturers,  
Birkhampstead.

Dear Sirs,

With reference to our order of the 15th instant for white printing paper for export, please note that the paper is to be packed in bales of about 5 cwt. each marked and numbered



and forwarded to the order of Messrs. Gibson & Sons, Dock Street, Liverpool for shipment on our account.

Please state on your invoice the actual measurements, gross weight, net weight and contents of each package and also send their particulars with value to the forwarding agents for Customs purposes.

Yours faithfully,  
SIMPSON BROWN & Co.

**5. Instructions to Forwarding Agents.**

Cardigan Lane,  
London, E.C.,  
*20th February, 1940.*

Messrs. Gibson & Sons,  
Dock Street, Liverpool.

Dear Sirs,

We have this day instructed Messrs. Nixon

& Co., of Birkhampstead to forward to you on our account 5 bales of paper for Bombay, marked



Bombay 1/5.

Please ship the goods at lowest rate of freight per first steamer for Bombay. Three Bills of Lading are to be made out in our name as Shippers and freight is payable here. The name of the vessel and the date of sailing should be communicated to us at once to enable us to attend to insurance.

Yours faithfully  
SIMPSON BROWN & Co.

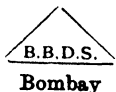
**6. Advising Despatch of Goods by Manufacturers.**

Birkhampstead,  
25th February, 1940.

Messrs. Simpson Brown & Co.,  
Cardigan Lane, London, E.C.

Dear Sirs,

We have this day despatched per L. N. Ry., carriage paid, according to your instructions dated 20th inst., 5 bales of White Printing Paper, marked



1/5 to Messrs. Gibson & Sons, Dock Street,  
Liverpool, for shipment to Bombay.

Enclosed please find our invoice for £ 20-19-6, copy of which has also been sent to your shipping agents and favour us with your cheque for same at your early convenience.

Encl :—Invoice.

Yours faithfully,  
NIXON & Co.


**7. Manufacturers' Invoice.**

Birkhampstead,  
25th February, 1940.

Messrs. Simpson Brown & Co.,  
London.

**Bought of Nixon & Co.**

Order No. 180.

 <b>B.B.D.S.</b> Bombay 1/5		Rate	£   s.   d.
	150 Reams White Printing No. 2250		
	18 × 22, 14 lbs.; 500 Sheets packed in 5 Bales of 30 each; Gross weight 600 lbs. each; Net weight 560 lbs. each	1½d.	16   17   6
	Forwarded to Messrs. Gibson & Sons Liverpool for shipment.		
	Charges :—		
	Packing 5d. per bale	1   7   6	
	Cartage	0   4   6	
	Ry. Freight	2   10   0	4   2   0
			<hr/> 20   19   6

**8. Letter from Exporters to Manufacturers, enclosing cheque in Settlement.**

Cardigan Lane,  
London, E.C.  
27th February, 1940.

Messrs. Nixon & Co.,  
Paper Manufacturers,  
Birkhampstead.

Dear Sirs,

We are in receipt of your letter of the 25th inst. advising despatch of five bales of White

Printing paper to Messrs. Gibson & Sons, Liverpool, for Shipment to Bombay, on our account, and enclosing invoice for the same.

Enclosed please find a cheque for £ 20-19-6 in full settlement and favour us with your formal receipt and oblige.

Yours faithfully,  
SIMPSON BROWN & Co.

### 9. Shipping Agents' Advice to Exporters.


Dock Street,  
Liverpool,  
28th February, 1940.

Messrs. Simpson Brown & Co.,  
Cardigan Lane,  
London E. C.

Dear Sirs,

According to your instructions we have this day shipped 5 bales of White Printing paper marked and numbered as below, per steamer *Ambala* and now beg to enclose three bills of lading together with a statement of our charges which amount to £ 4-7-6

The vessel is due to sail on March 4, 1940.

  
B.B.D.S.  
Bombay

1/5

Yours faithfully,  
GIBSON & SONS.

**10. Bill of Lading (Particulars).**

Steamer :—"Ambala".

Captain :—Wilkinson.

From—Liverpool to Bombay.

5 cases of paper.

Freight on 40 c. ft. @ 45/- per ton of 40 c. ft.

Plus primage 10% = £ 2-10-9.

To Order.

Three Bills affirmed.

Dated, 28th February, 1940.

**11. Letter to Insurance Company.**

Cardinal Lane,

London, E.C.

1st March, 1940.

The Mercantile Insurance Co. Ltd.,

Lombard Street,

London.

Dear Sirs,

Please note that the following will attach  
to our open policy No. A.L. 1456 namely :—

5 Cases Printing Paper.

            
B.B.D.S.

Bombay

1/5 Value £ 30-0-0

Liverpool to Bombay.

Per Steamer "Ambala"

Sailing on 4th March, 1940.

Yours faithfully,

SIMPSON BROWN & Co.

**12. Letter Advising Shipment.**

Cardigan Lane,  
London, E.C.  
*2nd March, 1940.*

Messrs. Bankey Behari Lal Debi Singh,  
Generalgunj, Cawnpore, India.

Dear Sirs,

In compliance with your order No. 295 of the 1st February, 1940, we beg to advise shipment of 5 cases of White Printing paper per ss. "Ambala", which is due to sail from Liverpool on the 4th March.

Herewith we enclose copy of Invoice for the amount of which, *viz.* £ 24-16-1 we have drawn on you at 90 days sight, order ourselves, and have negotiated the draft with documents attached through the National Bank of India Ltd., the documents to be delivered on payment of invoice value together with bank charges.

Relying upon you to honour the draft on presentation and awaiting your further commands.

We remain,  
Dear Sirs,  
Yours faithfully.  
SIMPSON BROWN & Co.

**13. Export Invoice.**

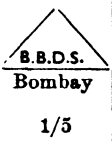
Cardigan Lane,  
London, E.C.  
*2nd March, 1940.*

Invoice of five cases of Printing paper shipped by the undersigned per s.s. "Ambala"

from Liverpool to Bombay, by order and for account and risk of Messrs. Bankey Behari Lal Debi Singh & Co., Cawnpore.

Insurance effected here  
as per instructions.

Indent No. 295.

	5		2½d.	£	s.	d.	£	s.	d.
		Bales containing 150 reams of white printing paper No. 2250; 18 × 22; 14 lbs. = 2700 lbs.					28	2	6
		<i>Charges :—</i>							
		Freight charges 41 c. ft. @ 35s. per ton		1	16	0			
		Primage 10%		0	3	7			
		Bill of Lading		0	2	6			
		Insurance on £ 30		0	3	0			
		Stamp and fee		0	0	6			
		Bill stamp		0	0	6	2	6	1
							£ 30	8	7

E. & O. E.

2nd March, 1940.

SIMPSON BROWN & Co.

#### 14. Letter to Bank.

Cardigan Lane,  
London, E.C.

4th March, 1940.

The Manager,

The National Bank of India Ltd.,  
London.

Dear Sir,

Enclosed we beg to hand you, for collection on our account, a draft for £ 30-8-7, drawn on Messrs. Bankey Behari Lal Debi Singh, Cawnpore, at 90 days sight, against shipment of goods per s.s. "Ambala". The following documents are

attached :—Invoice, Insurance Policy and Bill of Lading in triplicate.

Documents to be surrendered on payment.

Yours faithfully,  
SIMPSON BROWN & Co.

### 15. Documentary Bill.

London,  
14th March, 1940.

No.....

Stamp
-------

Exchange for £ 30-8-7

Ninety days after sight of this first of exchange (second and third of the same tenor and date unpaid) pay to the order of the National Bank of India Ltd. Pounds thirty, eight shillings and seven pence sterling, value received at current rate of exchange for Banker's sight draft on London, together with interest at 6% added thereto from date hereof to approximate due date of arrival of the remittance in London, and bank charges for collection.

Documents attached to be surrendered on payment.

SIMPSON BROWN & Co.

Messrs. Bankey Behari Lal Debi Singh,  
Generalganj,  
Cawnpore.



**16. Letter from Bank Advising arrival of shipment.**

Cawnpore,  
20th March, 1940.

Messrs. Bankey Beharilal Debi Singh,  
Paper Merchants,  
Cawnpore.

Dear Sirs,

We beg to inform you that we have received today for collection through our London office a documentary draft for £ 30-8-7 drawn on you by Messrs. Simpson Brown & Co., of London, against a shipment of five bales of printing paper. The shipping documents are to be delivered on payment for which please arrange.

Yours faithfully,  
For The National Bank of India Ltd.  
JOHN HUNDERSON,  
*Manager.*

**17. Instructions to Clearing Agents.**

Generalganj,  
Cawnpore,  
21st March, 1940.

Messrs. J. N. Mehta, & Co.  
Clearing Agents,  
Bombay.

Dear Sirs,

A consignment of five bales of printing paper, shipped to us from Liverpool per s.s. "Ambala" by Messrs. Simpson Brown & Co., of London, is due to arrive at Bombay on the 25th of this month.

We shall be glad if you undertake to clear the goods and forward them to us by goods train to Cawnpore Central Station.

The Bill of Lading duly endorsed in your favour and the Invoice of the goods are herewith enclosed.

Please send your bill of charges along with the Railway Receipt.

Yours faithfully,  
BANKEY BEHARI LAL DEBI SINGH.

Encls :—2.

### 18. Advice from Clearing Agents.

Bombay,  
30th March, 1940.

Messrs. Bankey Behari Lal Debi Singh,  
Paper Merchants,  
Generalganj, Cawnpore.

Dear Sirs,

In accordance with your instructions of the 21st inst. we have attended to the clearing of your consignment from Liverpool and have today forwarded five bales by goods train to Cawnpore Central Station.

We enclose herewith the Railway Receipt, Receipted Bill of Entry, Dock Chalan together with a bill of our charges.

Yours faithfully,  
J. N. MEHTA & Co.

Encls :—4.

## TEST QUESTIONS.

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1. A firm of commission agents in Calcutta receives an order from a merchant in London for the supply of 500 bags of rice. Explain shortly the method of procedure that would be followed by the Calcutta firm in executing the order. Each necessary successive stage in the process must be clearly stated, mention being made of all requisite documents.

2. Messrs. Khemraj & Sons, of Bombay in the ordinary course of business instruct their buying agents, Messrs. John Simth & Co., Manchester, to purchase and ship a consignment of carpets. The order is passed on to a firm of carpet manufacturers, Messrs. Thomas Hilton & Co. Halifax, who are requested to prepare the goods and forward them to Messrs. Peter Kelner & Co., forwarding agents at Birkenhead, for shipment. The order having been executed the manufacturers forward their invoice for the goods, payment being afterwards made by cheque. The sellers request the forwarding agents in Birkenhead to effect shipment insurane, etc., the charges being debited to the seller's account. The shipping invoice is then made out and one copy sent with a letter advising shipment, and informing the buyers that a documentary draft @ 30 d/s for the amount of the invoice has been drawn and negotiated through the National Bank of India, by whom it will be presented for acceptance.

You are required to draft the following letters and documents :—

(i) A letter ordering 200 carpets, 42"×36" @ 12s. 6d. each, in four designs to be packed in bales and despatched

as early as possible. Marks


  
K.S.
   
Bombay.

(ii) A letter from the sellers to the manufacturers placing order for the above.

(iii) A letter from the Manufacturers to forwarding agents advising despatch of goods for shipment and that instructions would be sent by the exporters.

(iv) A letter from the manufacturers to the exporters advising despatch of goods to forwarding agents and enclosing invoice.

(v) An invoice to be sent to the exporters from the following details:—

200 carpets 42"×36" @ 12/6 each, in four bales; packing 8/5 per bale; carriage to port 18/-.

(vi) A letter from the exporters to the manufacturers enclosing cheque in settlement.

(vii) A letter from exporters to forwarding agents instructing them to undertake shipment, effect insurance for £ 150 and take out B/L *to order*.

(viii) An export invoice to be sent to buyers adding the following to the above details in (v):—

Freight	£ 3-5-6
Bill stamps	0-0-6
Bank charges	0-0-4
Insurance	0-2-6
Dock dues & haulage	0-4-6
Buying commission	@ 2½%

Goods shipped per s. s. "Richmond", Liverpool to Bombay.

(ix) A documentary draft at 30 d/s for the amount of the invoice.

(x) A letter from the exporters to the National Bank of India Ltd., Manchester branch enclosing the draft together with the documents attached and requesting them to do the necessary.

(xi) A letter from the sellers to the importers advising them that the goods have been shipped and that they have drawn on them at 30 d/s draft, which has been negotiated through the National Bank of India, Ltd., documents to be surrendered on the draft being accepted.

## CHAPTER X.

### INSURANCE—General Principles.

Persons and property alike are continuously exposed to certain dangers. Prudent people, in order to ensure to themselves or their dependents the continuance of an income, are prepared to pay a part of that income to those who are prepared to take upon themselves the risks of loss arising from these dangers. Insurance is thus a provision which a prudent man makes against accidental or inevitable loss or misfortune. It is in the nature of a speculation ; but to guard against wagering, the law provides that only such persons as have a pecuniary interest in the thing insured may enter into these contracts. Hence, no person can legally effect an insurance on any kind of property or upon the life of another person, who is not likely to suffer a pecuniary loss by the destruction of the property or the death of the person insured.

Though insurance is largely based upon self-interest and family protection, it is the most enlightened and secure form which self-interest and protection can take. It is the method by which an individual can guard against leaving his family destitute by reason of his premature death, or against the risks of loss by fire, sea perils, accident, sickness or any other misfortune. Under the protection of insurance merchants venture their ships and cargoes on the high seas

without worrying about the dangers to which they are exposed.

Insurance is an organisation in which individuals wishing to cover against risks pay into a common fund from which claims are paid, and the losses are, therefore, spread over the community instead of falling as a crushing burden on the few. The organisers in this pooling of resources and the spreading of risks over a very wide area are the insurance companies and insurance brokers. The accumulated funds of the various insurance companies amount to several crores of rupees and they represent the resources which are available to cover all the risks that may happen to individuals or arise in industrial and commercial operations.

Originally the word insurance was synonymous with the word 'assurance', but there is a tendency nowadays to draw a fine distinction between the meanings of these two words. The word 'assurance' is applied to those contracts in which a fixed payment is guaranteed on the happening of a specified event which is bound to happen sooner or later *e.g.* death. The word 'insurance', on the other hand, contemplates the granting of certain compensatory payments on the happening of certain events stipulated in the contract, which events are not expected but may happen. Insurance, thus refers to a contract of indemnity against a contingency. It should, however, be noted that these words are sometimes used indiscriminately.

Insurance is a contract between two parties in which one of them, the *insurer* undertakes in consideration of a certain sum, called the *premium*, to indemnify or assure the other, called the *insured*, against a certain amount of loss from the occurrence of a specified contingency, such as the burning of a certain building, the loss of a ship or cargo, or the death of a certain person. The document embodying the contract of insurance is known as the *policy*, which bears a stamp varying according to different classes of insurance.

There are many forms of this contract, for a man may insure anything from a pane of glass to his own life, but the three most important, forms are Life Assurance, Fire Insurance, and Marine Insurance, which will be explained in detail in the following chapters.

**Life Assurance.** Human life may be regarded as a form of capital, since the death or disablement of an individual deprives those dependent upon him of a valuable income-producing asset. For instance, the death of a married man often results in his wife and children being left without any means of support. The joint family system in India was devised as a protection against this contingency. But this system is gradually dissolving and hence the necessity of life assurance, the benefits of which are being gradually realised in India.

**Fire Insurance.** This is concerned with the protection of capital in various forms. The

expansion of industry with the introduction of division of labour has brought into existence huge factories. These have made organised fire insurance an absolute necessity.

**Marine Insurance.** This is the oldest form of insurance and has for its object the protection of merchants and ship owners from losses arising from sea perils. The great importance of British overseas trade is largely due to the high degree of security provided by those specialising in marine insurance business.

**Accident Insurance.** The oldest form of accident insurance is the Personal Accident Insurance which originated with the introduction of Railways in England. It has become important, in the present century. Workmen's compensation is another type of accident insurance which has come into much greater importance with the development of factory system of production. Under this system of insurance, employers take out policies in order to cover against the compensation which they might have to pay to labourers under Workmen's Compensation Acts, for injuries received by them arising out of and in the course of their employment.

The contract of insurance contained in a fire or marine policy is "a contract of indemnity and indemnity only." This means that on the happening of an event insured against, the insured shall be fully indemnified or compensated for the damage, but shall never be more than fully indemnified. In respect of property, whether



the insurance is against fire or marine risks, the sum which may be claimed in case of loss or damage is the value of actual loss sustained. For example, if a person insures a building against loss by fire for an amount higher than the actual value, he cannot in case of loss by fire recover more than the actual amount of loss. This statement does not apply to life assurance, where the measure of indemnity cannot be so fixed. A life assurance is simply an engagement to pay a certain sum of money on the death of a person or on his completing a certain number of years. The contract of life assurance once fixed is immutable and invariable.

A contract of insurance like other contracts is a matter of offer and acceptance and must satisfy all the conditions necessary for a valid contract. It has, however, two special features which are not present in other contracts. In the first place the insured must have what is known as "insurable interest" in the subject-matter of insurance. This means that the person effecting an insurance must be in such position that he will benefit by the safety of the subject-matter insured and suffer a pecuniary loss by its destruction or damage. A person can insure his life for any amount, as he can have an unlimited interest in his own life or he may take an insurance on the lives of his dependents or those whose death is likely to involve him in some pecuniary loss. In the case of fire insurance, the English Law requires that insurable interest must exist both at the time the insurance is effected and at the time

the loss occurs. In the case of marine insurance the insurable interest need not exist at the time the insurance is effected but it must exist at the time of loss or destruction.

✓ The other special feature essential to all contracts of insurance is that they are said to be contracts *uberrimae fidei* i.e. contracts requiring absolute good faith on the part of the insured. Under the Law any false statement or representations, made for the purpose of obtaining a lower rate of premium, give the insurer or underwriter the option of cancelling the contract. It is, therefore, essential that the insured should make a full and fair disclosure of every material fact that is likely to affect the judgment of the insurer in fixing the premium or in the acceptance of the proposal. This duty is thrown by law upon the insured, since the insurer accepts the proposal mainly on the basis of the statements made by the person. Thus any statements made fraudulently, negligently or even innocently for want of knowledge are likely to make the contract voidable.

✓ **Subrogation.** Another feature which applies to all contracts of indemnity is that where the insurer has paid for a total or partial loss on the property insured he thereby becomes entitled to the benefit of all the rights and remedies which the insured had in the subject-matter of insurance. This right of stepping into the shoes of another is known as the doctrine of subrogation. For example, if a ship insured for £ 10,000 is lost and the insurance company pays for a total

loss, the ship will become the property of the insurance company, if it is subsequently found out. But if a ship valued at £ 10,000 is insured for £ 8,000 only and it sinks owing to a collision with another ship, and the insurance company is made to pay a total loss of £ 8,000 ; but if the assured recovered, say £ 7,500 from the other vessel, for having wrongfully collided with the vessel in question, the insurance company is entitled to this amount of £ 7,500.

**Re-insurance.** When an insurance company insures part or whole of the risk which it has undertaken with another company or underwriter it is called re-insurance. The re-insurance does not affect the position of the original insured, as the original insurance is a distinct contract by itself and the re-insurance in its turn forms equally a distinct contract between the second set of parties. The original insured has no right against the re-insurer, but only against the person or company with whom he originally insured. In case of re-insurance there is always a clause named re-insurance clause whereby the re-insurance is effected subject to the clauses and conditions of the original policy. Re-insurance of risks is a feature which is common to all forms of insurance.

✓ **Double Insurance.** When the insured effects more than one insurance on the same adventure or interest, and the sums insured exceed the indemnity allowed by law it becomes a case of double insurance. In the case of life insurance a man can take as many policies and in as many

companies as he may like, and he or his survivors or assignees can recover on all the policies. This is not possible in cases of fire and marine insurance, which are contracts of indemnity only. If the total amount of all the policies taken together comes to more than the actual value of the subject-matter insured, the insured can only recover the actual loss. The insured can, however, sue on any policy he desires, and recover the whole of the sum to which he is entitled, by way of indemnity. But as between the insurers, each is liable to contribute rateably his proportionate part. Any insurer who has paid more than his proportion of the loss is entitled to contribution from the other insurers. For example, if an insurance policy has been taken out with two companies each for Rs. 10,000/- and the subject-matter is destroyed the policyholder can claim Rs. 10,000/- only. If, however, for a loss of Rs. 10,000/- he has two policies each covering him for Rs. 5,000/- of the loss, he has not effected double insurance, but merely a divided cover.

### **The principle of insurance.**

The principle of insurance is founded on the doctrine of probability. As regards any single individual it is impossible to predict that he will die within a year ; but if we take a large number of individuals, say ten thousand we can easily make an estimate that over a period of ten years so many may die. Thus we may predict with tolerable certainty that almost a definite number will die annually under similar circumstances. If we take a still larger number of persons, say a lakh, and

extend the period to fifty years, the results will be more accurate. Thus the average duration of life of men engaged in various occupations and of stated ages, is no longer a matter of speculation, but of ascertained fact. Insurance companies collect abundant statistics in respect of the duration of human lives, fire losses in respect of building and losses arising from perils of the sea. They divide these into distinct classes and fix the proportion of loss to the total in each class. It is in this way that insurers calculate these risks and estimate their premiums. From extended observations and carefully prepared tables they are in a position to know the chances of the occurrence of the contingencies insured against and determine the rate of premium accordingly.

**Insurance Companies.** The business of insurance is carried on by associations and insurance companies and by 'Lloyds' underwriters. The insurance companies are divided into two classes (1) Mutual companies, and (2) Proprietary companies. *Mutual companies* are merely associations of policyholders having no shareholders in the ordinary sense of the term. The whole of the profits are divided among the policyholders either in the form of bonus or in the reduction of premiums on existing policies only. *Proprietary companies* are joint stock companies registered under the Companies Act, in which the capital is subscribed by shareholders. The whole of the profits after paying bonus on 'with-profits-policies' belong to the shareholders and the policyholders have no hand in the management. Most

of the companies carrying on life, fire, marine and other kinds of insurance business belong to this class. Some of them are powerful organisations having large subscribed capital and reserves with a net work of branches and agencies and an army of representatives all over the world. There are very few companies which take up all classes of insurance business.

The largest proportion of the marine insurance business of the world is carried on by the underwriters at 'Lloyds', having their agents stationed all over the world. *Lloyds* is an association performing many functions including the business of marine insurance. The business of marine insurance is not, however, carried on in its corporate capacity. It is left to its individual members who are known as *underwriters*. The corporation through its committee takes care that only reliable men do this business. Each member has to deposit security to ensure honest dealings.

### **Advantages of Insurance.**

Insurance has become a vital necessity in the modern commercial world. Nearly all commercial enterprises are subject to a certain amount of risk, and the ultimate object of insurance is to provide that the loss instead of falling upon one person, shall be distributed among many. All persons who insure in a group with one insurance company make a small contribution towards any loss which may be sustained by any individual member of that group. The actual losses are thus borne

in small amounts by the numerous insurers throughout the community who continue to pay the premiums but never suffer losses. The risks connected with the various industrial and commercial enterprises are too numerous to be borne entirely by the businessman. He cannot bear the whole responsibility for fire and accidents and for losses of goods in transit on sea and on land. The risk of carrying on any business is a sufficient burden for the businessman, and the security which insurance provides in other directions enables him to plan and organise his business to the best advantage.

As we have seen earlier the range of risks covered by insurance policies tends continually to increase, and there is hardly anything which cannot be insured in modern times. *Fire and accident insurance* protects a man against all losses arising from fire and accidents to his property and person respectively. *Marine insurance* affords protection against loss or damage to shipping or cargo as result of accident or peril on the high seas. *Fidelity guarantee insurance* provides a means of protection against loss through embezzlement etc. on the part of employees. *Workmen's Compensation Insurance* may be effected by an employer to safeguard himself in respect of all accidents which may befall workmen engaged by him. Under *Loss of Profits Insurance* people seek to protect themselves against loss which may occur as a result of cessation of business owing to destruction or damage to business premises by fire, flood or other catastrophe.

Life assurance is now recognised as a necessity by all civilised nations. It provides men and women of modest means, the resources upon which they can maintain themselves in periods of sickness and old age. It enables people of every class to avoid much future misery to their families in case of their premature death and makes them independent of public or private charity. It enables a man to save in the most convenient and scientific manner and to acquire a position which can only be attained by years of studious saving. In other words it promotes thrift and discourages extravagance, as the fear of the lapsing of a policy compels a man to save. It combines the most perfect form of investment with the most perfect form of protection, as the policy not only provides for the payment of a fixed sum at death but also some interest on the amount paid by way of premiums. A life policy strengthens a man's credit and gives him a good standing in his business relationship. A businessman can make provision for his family without disturbing the capital invested in the business. The policy does not depreciate in value and provides ready cash immediately after maturity, whereas other investments may be sold at a loss. A life policy is a saleable asset and can be assigned in satisfaction of a debt or given as security for a loan to the extent of its *surrender value*. Life insurance creates a sense of independence and freedom from anxiety which contributes greatly to the success of a business. Life policies present an extensive range of attractive insurance schemes which are



designed to cover every conceivable contingency in life including children's education and marriage expenses.

Insurance companies of all types are largely responsible for the industrial development of civilised nations. The huge funds collected by insurance companies by way of premiums are generally lent out to banks and big industrial concerns. Insurance companies thus mobilise the scattered savings of the people for the industrial and commercial development of a country.

### **State Control.**

Like banks, insurance companies are the custodians of people's money and it is but natural that their working and management must be under strict control and supervision of the State. The working of insurance companies in India is now regulated by the Insurance Act, 1938, which embodies stringent provisions regarding the promotion, management and accounts of insurance business in British India, with a view to safeguard the interests of the policyholders. Every company carrying on insurance business in British India must be registered with the Superintendent of Insurance and must have a minimum working capital of Rs. 50,000 exclusive of the deposit to be made with the Reserve Bank of India. The deposit of Rs. 2,00,000 is required in the case of a company carrying on life business alone. Rs. 1,50,000 in the case of a company carrying on fire business and a similar amount is necessary if a company carries on marine business alone.

Varying amounts of deposits are fixed for a combination of fire, marine or other business with that of life insurance. Separate accounts are to be maintained for each class of insurance business. Audited accounts and other statements have to be filed with the Superintendent of Insurance every year, and the Superintendent of Insurance is given wide powers for investigating into the affairs of any insurance company. Every insurance company is now required to have at least one-fourth of the whole number of directors elected from amongst its policyholders.

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### TEST QUESTIONS.

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1. Explain the nature and purpose of a contract of insurance.
2. Explain the distinctive features of the important types of insurance.
3. In what respects does a contract of insurance differ from ordinary contracts.
4. "Insurance is a contract of indemnity". Explain the meaning of this statement. Is it true of all classes of insurance?
5. Explain the difference between:—(a) assurance and insurance; (b) Mutual companies and Proprietary companies, (c) Re-insurance and Double Insurance.
6. Explain the principles on which the business of insurance is based.

7. What do you understand by the "doctrine of subrogation" as applied to contracts of insurance?

8. Explain the meaning of "insurable interest" in connection with contracts of insurance.

9. Discuss the advantages of the different types of insurance to people in general and business in particular.

10. Explain the nature of the restrictions imposed and the control exercised by the State on the formation and working of insurance companies in India.

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## CHAPTER XI.

### LIFE ASSURANCE.

The mainspring of life insurance is a laudable desire on the part of a person having others dependent upon him, to provide a sum of money for these dependents in the event of his death. Provision might be made by periodically investing a proportion of his income in a bank or elsewhere, but the uncertainty of living long enough to complete this provision and the destitution which his premature death would bring about to his dependents, makes it incumbent upon him to insure.

Insurance in a crude form existed in India about 1,000 years before the Christian era. The two forms of insurance which were devised by the Aryans have come down to our own times and are still prevailing in many parts of India. One of them is that at the time of death in a family all others rich and poor connected with the family as relations or friends contribute a small amount varying with the degree of relationship. That is known as 'Bura Din' or Bad Day, implying that the subscription is in the nature of a help against a calamity. The more popular scheme is that which is connected with marriage and is known as "Neota". Under this scheme every person who receives an invitation to attend a marriage ceremony has to pay something as 'Byohar' towards a fund to enable the father of the bride or bridegroom as the case may be to meet the expenses of

marriage. The joint family system devised by our ancestors was intended to serve the purpose of insurance. Under this system it is incumbent on the head of the family to provide the means of subsistence to the non-earning members.

With the development of individualistic tendencies, loss of ancestral occupations and the increasing dependence of men on service, the joint family system is losing its strength. A man of limited means cannot make in a few years' time such large savings so as to be sufficient for his family after his premature death. The result very often is that his wife and children are compelled after his death to put up with unthinkable hardships.

The advantages of life assurance are real and various and are recognised by all those who realise the uncertainties of life and believe in the necessity of making a provision for old age and dependents. It is therefore necessary that every worldly man should make a provision for his old age and those dependent on him out of his income. Life assurance is thus a happy device by which civilised man protects himself against the various contingencies of life.

Life assurance is a contract whereby the insurer, in consideration of the payment of premiums by the assured, agrees to pay a specified sum, on the happening of a specified event in the life of the assured. The event may either be death or the reaching of a certain age, and the premium may be a sum down, termed a single

premium, or equivalent annual payment, termed annual premium payable during the life of the assured or over a stated number of years.

The idea of life assurance is thus to collect a fund by premiums out of which the amount agreed to in the policy is payable on the happening of the event contemplated by the policy *viz.*, death or survival at a certain age.

The contract of life assurance differs from all other forms of insurance protection in that the probabilities on which it is founded can be accurately calculated and that the contingency of human death is one which must arise sooner or later. A life policy is in consequence a contract with an increasing value as its maturity grows nearer. It is a document of title and can be transferred in the same way as any other form of security. Another point which distinguishes life assurance from other forms of insurance is that the premiums once fixed cannot normally be altered, though the risk increases with age.

Life assurance presents two important elements, *viz.*, protection against risk and investment. The element of protection is present in all contracts of insurance, but the element of investment is one which distinguishes life insurance from other kinds of insurance. It is this element which makes the premiums in life assurance so high and which gives surrender value to a life policy. There is no other method which can secure this double advantage. If a person deposits his savings into a bank or the Post Office, the money goes on

increasing with compound interest, unless withdrawn, but in case of death the bank or the Post Office will not pay anything more than what stands to his credit at the time of death. This is an investment pure and simple and contains no element of protection against death. On the other hand a contract of fire, marine or accident insurance is a contract of indemnity only, in which the insurer undertakes to compensate the insured only upto the amount of actual loss sustained by the happening of the event insured against. Life assurance is the best and most effective form of providence. It is a cheaper and quicker way of creating an estate than ordinary saving and is the only way of making a certain and immediate provision for dependents. Life insurance secures protection against death and at the same time enables the insured to obtain a lump sum at the completion of the period of insurance together with profits in case of with profit policies.

The business of life insurance is founded on the law of probabilities which is closely allied to the law of averages fundamental in all branches of insurance. If a large number of lives is kept under observation for a number of years and the deaths that occur in each year of age are accurately recorded, a life office can estimate with tolerable accuracy, how many persons will die annually under similar circumstances. Thus the number of persons of a given age dying in a given time is not a matter dependent entirely on chance.

Proceeding on this principle *Tables of mortality* have been prepared at different places, and

under a variety of circumstances. These tables clearly show the number of persons likely to die at each age from year to year out of a given number of persons assumed to be born at one and the same time. With the help of these mortality tables companies transacting life assurance business calculate the rates of premiums to be charged, and on the rate of mortality, adopted in any instance, depends the sufficiency of the premiums the companies receive against the risks which they undertake.

To illustrate the above principle, let us assume that a fund is formed consisting of the premiums paid by say 1,000 selected persons aged 25 years next birth-day. Suppose that according to the *mortality table* applicable to this age, an annual premium of Rs. 20/- payable throughout life should be sufficient to enable Rs. 1,000/- to be paid out of the fund at each death. It is quite certain that all these persons will not die at the same time. Some will die early ; others will live long ; but taking all together, the premiums realised and the interest earned thereon should be sufficient to meet all the claims that will arise from year to year. Thus the amounts paid to the representatives of those who die early are made good out of the contributions of those who live long.

**The Proposal.** The first step for entering into a contract of life assurance is to submit a proposal to the company selected, upon a form issued for the purpose. As a contract of life assurance like other insurance contracts, is a contract



of absolute good faith, the proposer must observe the utmost good faith in answering all the questions printed on the form. Any wrong statement made by the proposer renders the contract voidable at the option of the company. The acceptance of the proposal by the company and the payment of the first premium completes the contract which finds expression in the form of a policy.

**Who may insure.** Any person can insure his life for any amount as he is supposed to have an unlimited interest in his own life. Similarly he can insure his wife for any amount according to his own status. No person can insure the life of another unless he has an insurable interest in the life to be insured. Insurable interest must be of a pecuniary kind *i.e.*, interest in some right of property existing at the time the policy is taken, which would be injuriously affected by the death of the person proposed to be insured. A creditor has an insurable interest in the life of his debtor upto the amount of his debt. A person who has stood surety for another in respect of a loan can insure the life of the person for whom he has stood as surety. A son has insurable interest in his parent if he is supported by him and similarly a parent has an insurable interest in the life of his son to the extent of the financial support he gets from him. In a contract of life assurance the insurable interest must exist at the time the policy is taken out but not necessarily when the claim is made.

**Kinds of Policies.** Various kinds of policies are nowadays issued by life offices with a view

to satisfy the requirements of the insuring public. The following are the most common types of policies :—

(1) **Whole Life Policies.** A whole life policy is one which provides for the payment of a stated sum at death whenever it may occur and from whatever cause. It is the simplest and cheapest of all insurance policies and was in the beginning the most important form of assurance. The consideration or premium for such a policy may be a single cash payment or an annual payment throughout the life of the insured. It can also be arranged that premiums may be fixed for a certain number of years say 10, 15, or 20, in which case the policy is termed a '*Whole Life Limited Payments Policy*'. It may also be arranged that the rate of premiums is lower during the early years in which the policy is in force and higher in subsequent years. The policy under such a contract is known as *sliding scale policy*. It may also be arranged that the rate of premium is higher in the early years and lower in later years to suit the convenience of the insured.

(2) **Endowment Policies.** An endowment policy which provides for the payment of a stated sum of money either at the end of a number of years, say 10, 15, 20, 25, or 30, or at death if the assured fails to survive the selected period. This form of assurance combines protection with a provision for the future and consequently the premium is higher than for an ordinary whole life policy. The endowment may be single

or double. Under *single endowment* only the sum assured is payable, whereas under *double endowment* the assured gets double the amount, if he survives the selected period—the sum assured on the completion of the period and like amount payable at death. The rate of premium is, of course, higher. Some companies also issue *pure Endowment policies*.

A number of special policies are issued by life offices, but they are generally variants of this form of assurance.

**With or without profit policies.** Both Whole life and Endowment policies may be either with or without profits. A *with profit* policy is one in which the policyholder is entitled to share in the profits rateably with other holders of similar policies. The amount of profits declared at each valuation of a life office is known as *Bonus* and is generally payable when the policy matures. The bonus may, however, be utilised by the policyholder in reduction of premiums or may be realised in cash, but the amount realisable by these methods is much smaller than that added to the amount of the policy. *Without profit* policies do not entitle the holders to a share in the profits of the company and consequently the rates of premium on such policies are much lower than those charged for with profit policies.

(3) **Joint Life Policies.** An assurance may be effected on the joint lives of two or more persons under which the sum assured is payable at the death of any person occurring first. Such policies

may be effected by husband and wife jointly or by partners of a firm. In the latter case, the policy money realised is shared by all the partners and is used to pay off the share of the deceased partner in respect of his capital and his share in goodwill and the profits of the firm upto the date of his death. The object of the partners' joint policies is, therefore, to avoid the financial embarrassment that often takes place on the death of a partner. Some companies also issue what are known as *Last survivorship policies* in which case the sum assured is payable at the death of the last survivor of the group. A survivorship policy is one under which the sum assured is payable if one person dies before another and in that case only.

(4) **Policies on the lives of children.** Several life offices are prepared to issue policies suitable for children and these are becoming very popular. These are either for the purpose of enabling parents to meet the expenses of educating their children after a certain number of years or the expenses of marriage when it takes place. Under an educational policy the insurance company undertakes to pay a fixed sum yearly or half-yearly or even monthly for a specified period after premiums have been paid over an agreed period by the parent. If the parent dies in the interval the insurance holds good and no more premiums are payable, and if the child dies the premiums paid are usually returned to the parent excepting first. In the case of a *marriage endowment policy* the sum assured is payable at the time of the marriage of the child and in case of death of the child or

parent the same contract holds good as in an educational policy.

(5) **Term Policies.** Term assurance provides for the payment of a sum of money only in the event of the assured dying before a specified date. It is one of the simplest forms of assurance and is generally effected on the life of a debtor as a collateral security for the loan advanced. Such an assurance is nothing more than a contract of indemnity, since it does not possess the element of investment. If the party insured dies within the term, the creditor can recover the full amount, but nothing can be obtained in case the party survives. Such policies are also sometimes taken on the lives of senior partners of firms or managing directors of companies. The rates of premium are comparatively low.

**Insurance on female lives.** Policies are not generally issued on female lives unless they have independent means of living. All insurances effected on female lives carry an extra premium until fifty years of age, and thereafter the rates are the same as under the ordinary male table. The reason for this is that the risk of death in the case of female lives is greater on account of child birth than in the case of male lives. In the case of joint assurance of husband and wife also, companies charge an extra premium for the wife.

**Premiums.** The premiums, as we have already seen, are payments made by the assured in consideration of the risk covered by the policy. The premiums may be payable yearly, half-yearly

or quarterly, as may be agreed at the time the insurance is effected. They may also be paid monthly in which case insurance companies charge a little extra to cover interest. The premiums are always payable in advance and must be paid within the days of grace allowed by every insurance company. Generally one month is allowed when the premiums are payable yearly, half-yearly or quarterly; and 15 days when monthly payments are arranged. If payment is not made within the days of grace the policy lapses, but can be renewed by the payment of a fine along with the overdue premium. If payment is delayed for more than six months a medical examination must be undergone at the expense of the assured for the purpose of revival and all the arrears must be paid with interest.

The rates of premium at various ages and for various periods as well as those for whole life are contained in the *prospectus* issued by the life office. These are the rates which the company will charge on first class lives. Extra premium is payable where the person to be insured is engaged in what are known as 'hazardous occupations' or when he is living in unhealthy or tropical climates. Occupations connected with the army, navy, mining, electricity etc. are hazardous occupations. The extra premium is usually continued only whilst the hazardous occupation is being followed or whilst the assured is residing in an unhealthy climate.

Extra premiums are also charged on account of physical defect or defect in the family history

and where the defect is irremovable. It should be noted that insurance companies are not prepared to accept proposals from lives which suffer from dangerous diseases like phthisis or where they are engaged in highly dangerous occupations.

With a view to encourage life insurance the government in every country exempts insurance premiums from Income-tax. Under the Indian Income Tax Act, a person can pay one-sixth of his entire income without being required to pay tax on the amount paid in premiums. The amount of premiums must be taken into account for the purpose of ascertaining the total income and fixing the rate of tax.

**The Policy and its contents.** As we have seen a Life Policy is a stamped document embodying the terms and conditions under which the assurance is effected. It is issued under the seal of the company and signed by two directors and countersigned by the manager. The important clauses of a life policy relate to : (1) the name, address, occupations as well as the age next birthday of the assured ; (2) the sum assured and how it is payable ; (3) the amount of premium and the due date or dates thereof ; (4) lapse and revival of policy ; (5) surrender value ; (6) whether age is admitted or not ; (7) notice when the assured takes to a hazardous occupation ; (8) assignment ; (9) bonus additions and (10) settlement of claim.

**Surrender Value.** A life policy becomes a marketable security after the payment of a few years' premiums, when it can carry a substantial

loan and surrender value. The surrender value of a policy is the amount which an insurance company is prepared to pay to the assured if he surrenders or abandons the policy and thus extinguishes his claim against the company. In the case of whole life endowment and similar policies the surrender value varies with the number of premiums paid. The larger the number of premiums paid the higher is the surrender value. Companies usually allow a surrender value from 25 to 30 p.c. of the premiums received on non-profit sharing policies and 40 p.c. and upwards of the premiums paid on the 'with profit' policies inclusive of the bonus additions. Policies effecting temporary assurance do not carry a surrender value. A policy generally acquires a surrender value after 3 years' premiums have been paid. The surrender value of a policy represents the difference between the total premiums paid and the consideration for covering a risk during the currency of the policy together with the expenses of management. Any debt due to the company on account of loan etc., is of course deducted from the amount thus payable.

**Loans on Policies.** An assurance company is always prepared to grant a loan at a reasonable rate of interest on a policy which has acquired a surrender value upto 90 p.c. of such surrender value. Money can also be borrowed from bankers and private individuals on the security of life policies. The market value of a life policy is generally higher than what the insurance company is prepared to pay in case of surrender.



**Paid-up Policies.** Under Endowment and Limited Payment life policies the assured can, at any time after three years' premiums have been paid, apply for a *paid-up* policy and discontinue the payment of further premiums. Where the policy is made *paid-up* the amount payable at the end of the term of assurance is a fraction of the total sum assured. It bears the same proportion to the total sum assured as the period completed bears to the stipulated period of the policy. A *paid-up* policy cannot participate in future profits of the company but those already declared remain intact.

**Assignment of policy.** Life policy may be assigned by the assured by endorsement or by separate instrument on account of love and affection or for a valuable consideration. The person in whose favour the policy is assigned becomes entitled to the amount of the policy at maturity. Notice of assignment must be given to the insurance company in writing and an acknowledgment obtained. Where a policyholder becomes insolvent, the policy money is payable to the receiver provided he has given notice to the insurance company. If the policy is assigned before insolvency in favour of wife or child it cannot be touched by the receiver. If a policy is not assigned by the assured during his life time the legal heirs cannot claim the amount without producing a succession certificate to the company.

**Settlement of claims.** Claims on life policies arise either by death of the assured or by

maturity of the policy. Where the sum assured is payable on the completion of the selected period there is no difficulty in realising the money from the insurance company. In case of death, however, the representatives of the deceased must submit proof of death and satisfy the insurance company with regard to their title. Where a policy is assigned, the assignee has to prove his identity only, but where the assignment has not been made a succession certificate has to be submitted.

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### TEST QUESTIONS.

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1. Explain clearly the nature and purpose of a contract of Life Assurance. In what respects does this contract differ from other insurance contracts ?

2. Upon what do the Life Assurance Companies base their calculations when fixing the life assurance premiums ?

3. What do you understand by “insurable interest” in contracts of Life Assurance ?

X has a wife, a son, a servant, a grandmother and a friend who owe him Rs. 500/. Has X an insurable interest in the lives of any of these persons ? Have any of these persons an insurable interest in the life of X ? If so, under what circumstances and to what extent ?

4. Explain the procedure that must be gone through for the purpose of effecting life assurance.

5. Explain the distinctive features of :—(i) Whole Life Policies ; (ii) Endowment Policies ; (iii) Joint Life Policies ; and (iv) Limited Payment Life Policies.

6. The proposer for a Life Assurance makes a statement in the Proposal Form that he did not suffer from any disease tending to shorten his life. He knew that the disease from which he was suffering had the effect of shortening his life. What would be the effect of such a statement on the policy ?

7. Explain the terms :—Surrender Value, With-Profits and Without-Profits Policies, Mortality Tables, Paid-up Policies.

8. Name and define the document which embodies the contract of life insurance. What are the important points incorporated in such a document ?

9. What is meant by the “assignment of a policy” and how is it effected ? In whose favour can a life policy be assigned ?

10. What steps should the beneficiary of a life policy take to realise the policy money from the insurance company after the death of the assured ?

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## CHAPTER XII.

### MARINE INSURANCE.

**Its necessity.** Goods in course of transport by sea are exposed to serious risks. The ship-owners are in no sense insurers of the goods which they carry in their ships, apart from providing a sea-worthiness and exercising due care. In fact a Bill of Lading contains a long list of "sea perils" for which the shipowner undertakes no liability. The 'Excepted perils' include losses arising from Act of God, King's enemies, arrest and restraint by rulers, princes and people, fire, barratry of the master or crew, gales, stranding and other dangers of navigation. The keen competition among insurance companies and the anxiety of merchants to have their goods carried at the lowest rates have resulted in many additions to these excepted perils. It is to provide against loss caused by these 'excepted perils' that marine insurance is necessary. Not only this, the owners of the ships and freight are equally exposed to marine risks. It is, therefore, the desire of the owners of cargo, ships, and freight for complete indemnity or recompense for losses, which have made marine insurance an important feature of modern commerce. It may, however, be pointed out that in connection with cargo, the liability of the insurance company begins as soon as the liability of the shipowners ceases, and the two never overlap.

Marine insurance is a contract of indemnity against losses incidental to marine adventure accruing to the ship, cargo freight or other subject-matter of a policy during a given voyage or during a given period. The contract may be extended so as to protect the insured against losses on inland waters or any land risk which may be incidental to sea voyage. The contract of marine insurance like that of fire insurance is that of indemnity. It, however, differs from fire insurance, which is also a contract of indemnity. In fire insurance the indemnity is generally speaking limited to the actual loss sustained ; in marine insurance the measure of indemnity is ordinarily based on the values agreed upon in advance. The underwriter or the insurer in consideration of premium agrees to indemnify the insured against loss or damage caused by certain specified perils, sometimes called 'perils of the sea' but more accurately described as 'perils insured against'.

Amongst the subject matters of marine insurance may be the ship including the goods connected therewith, the cargo, and the freight. The rates of premium vary for different markets according to the risks involved. For instance, some markets are served by first class line of steamers, and this fact has an important bearing on the rates of premium, as the risk of the goods being damaged or lost is not so great in such cases as when goods have to be shipped to remote markets by inferior steamers.

**Insurable interest.** The underlying principle of this class of insurance is that the insured may

not make a profit out of a disaster, but may only be compensated for the actual loss sustained. It is, therefore, clear that no person can legally effect an insurance unless he has an insurable interest in the subject matter of insurance. Such interest must exist at the time of the loss, though it may not exist when the insurance is effected. The following are examples of persons having an insurable interest :—

- (1) Shipowners and owners of goods—to the extent of the value of their interest.
- (2) A mortgagee to the extent of the sum due to him.
- (3) An insurer who may re-insure to the extent of his liability.
- (4) The master and members of the crew for their wages.
- (5) Persons advancing money on *bottomry* or *respondentia* bonds—to the extent of their loans.
- (6) Persons advancing freight—if freight is not repayable in case of loss.

Where a person has no insurable interest and no expectation of acquiring such an interest at the time of the contract, the policy is void. Gambling or loss by maritime perils is now an offence under the English law and is punishable by fine or imprisonment.

**How to insure.** There are two ways of taking out a marine insurance policy. Either an application may be made direct to any of the large joint

stock companies transacting marine insurance business or to an underwriter who is a member of the *Lloyds*. In the former case the services of a broker may or may not be secured, but in the latter the business must be carried through a broker. The usual practice before taking out a policy is to invite quotations from two or three companies for purposes of comparison. In India marine insurance business is transacted mainly by joint stock companies. The party desiring to insure has to fill up a proposal form and hand over the same to the insurance company either direct or through an insurance broker or agent. The details that are to be filled up by the proposer are : the date, the name of the proposer, the name of the ship, the voyage, description of the goods, and the amount of insurance. In estimating the amount of insurance the insured is allowed to add to the cost of the goods, the freight, expenses and about 10% to cover anticipated profit. Nothing more than this is admissible. On receipt of the premium the insurance company will issue a *cover note* advising the insured that he is held covered against any loss pending the preparation of the policy. In due course the policy is prepared and delivered to the insured.

The marine insurance business in London is divided amongst the insurance companies and the association of underwriters known as “*Lloyds*”, who carry on their business over the London Royal Exchange. There is often a good deal of business rivalry between the companies and the underwriters. The term *underwriter* arises from the

fact that persons who signify their willingness to take part in the risk as insurers, subscribe their names to the policy and state the sums for which they respectively agree to be liable. In this way the whole risk is shared by a number of people. Where insurance is effected with an insurance company, the whole risk is in the first instance, undertaken by the company, which may transfer part of the risk by re-insurance.

Where insurance is effected at Lloyds, the intending insurer communicates the nature and extent of his requirements in writing or orally to a broker. The broker writes out the details briefly on a form known as the "slip" and submits the same to an underwriter, who quotes a premium for the risk. If the quotation is accepted, the underwriter initials the slip and inserts the amount of the risk he is prepared to accept. The broker then presents the "slip" in turn to other underwriters until the whole amount is covered. On payment of the premium a *cover note* is sent by the broker to his client intimating that the risk is covered. In case of claim each underwriter is bound to pay the amount which he has underwritten. In due course the policy is prepared, stamped and then submitted by the broker to the underwriters for signature and then delivered to the insured. The contract is deemed to be concluded when the proposal is accepted by the insurer, whether the policy is then issued or not.

### **The policy.**

The marine insurance policy is a document setting forth conditions on which the insurance



is covered by the insurance company or the underwriters, as well as the amount involved, the premiums to be paid and the towns and ports between which the insurance is valid. It is an antiquated document scarcely suited to the requirements of modern trade, but the form has the advantage of having been explained by legal decisions so that the meaning of every word of it is understood by the parties. Provision has, however, been made to meet the present day requirements by special clauses attached to the policy. The law relating to marine insurance in England has been modified in the Marine Insurance Act of 1906, which is based on legal decisions and the custom of Lloyds. The common form adopted by the Lloyds is the basis upon which all British and Indian insurance contracts are founded.

The following is a specimen of a Lloyds 'clean' policy *i.e.* one without any additional clause or deletions :—

### COPY OF LLOYD'S FORM OF POLICY

#### Be it known that

<p>S.G.</p> <hr style="border: none; border-top: 3px double #000;"/> <p>£</p> <hr style="border: none; border-top: 3px double #000;"/>	<p>as well in                      own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in part or in all, doth make assurance and cause                      and them and every of them to be insured, lost or not lost, at and from</p>
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upon any kind of Goods and Merchandises, and also  
upon the Body, Tackle, Apparel, Ordnance, Muni-  
tion, Artillery, Boat and other Furniture, of and in  
the good Ship or Vessel called the  
whereof is Master, under God, for this present  
voyage,

or whosever else shall go for Master in the said Ship, or by whatsoever other Name or Names the same Ship, or the Master thereof, is or shall be named or called, beginning the adventure upon the said Goods and Merchandises from the loading thereof abroad the said Ship upon the said Ship, etc.,

and shall so continue and endure during her Abode there, upon the said Ship, etc.; and further, until the said Ship, with all her Ordnance, Tackle, Apparel, etc., and Goods and Merchandises whatsoever shall be arrived at

upon the said Ship, etc., until she hath moored at Anchor Twenty-four Hours in good Safety, and upon the Goods and Merchandises until the same be there discharged and safely landed; and it shall be lawful for the said Ship, etc., in this Voyage to proceed and sail to and touch and stay at any Ports or Places whatsoever.

without Prejudice to this Insurance. The said Ship, etc., Goods and Merchandises, etc., for so much as concerns the Assured by Agreement between the Assured and Assurers in this Policy, are and shall be valued at

**TOUCHING** the Adventures and Perils which we the Assurers are contented to bear and do take upon us in this Voyage, they are, of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints, and Detainments of all Kings, Princes, and People, of what Nation, Condition, or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the said Goods and Merchandises and Ship, etc., or any part thereof; and in case of any Loss or Misfortune, it shall be lawful to the Assured, their Factors Servants and Assigns, to sue, labour, and travel for, in, and about the Defence, Safeguard and Recovery of the said Goods and Merchandises and Ship, etc., or any part thereof, without Prejudice to this Insurance; to the Charges whereof we, the Assurers, will contribute, each one according to the Rate and Quantity of his sum herein assured. And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured, shall be considered as a waiver or acceptance of abandonment. And it is agreed by us, the Insurers, that this Writing or Policy of Assurance shall be of as much Force and Effect as the surest Writing or Policy of Assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London.

*Warranted nevertheless free of capture, seizure and detention, and the consequences thereof, or of any attempt thereat, piracy excepted, and also from all consequences of hostilities or warlike operations, whether before or after declaration of war.*

And so we the Assurers are contended, and do hereby promise and bind ourselves, each one for his own part, our Heirs, Executors, and Goods, to the Assured, their Executors, Administrators, and Assigns, for the true Performance of the Premises, confessing ourselves paid the Consideration due unto us for this Assurance by the Assured

at and after the Rate of

IN WITNESS whereof, we the Assurers have subscribed our Names and Sums assured in

N.B.—Corn, Fish, Salt, Fruit, Flour, and Seed are warranted free from Average, unless general, or the Ship be stranded ; Sugar, Tobacco, Hemp, Flax, Hides, and Skins are warranted free from Average under Five Pounds per Cent.; and all other Goods, also the Ship and Freight, are warranted free from Average under Three Pounds per Cent., unless general, or the Ship be stranded.

### **Main clauses of the policy.**

The following are the main clauses of the Lloyds policy, which is embodied in the English Marine Insurance Act of 1906 :—

1. **The name of the insured or his agent.** In addition to the insertion of the name of the insured or his agent, this clause makes provision for the insertion of the name of the party to whom the subject-matter of the policy may be transferred or assigned wholly or in part.

2. **Lost or not lost.** This clause protects the insured in the event of the vessel being lost, even if later it should transpire that the vessel was lost before the insurance was effected, provided that the insured was not aware of the loss. There must, however, be complete confidence and good faith between the insurer and the insured. If

the insured knew of the loss and did not inform the insurance company at the time of effecting the insurance the policy would be invalid. For the same reason, the insurer would not be entitled to claim the premium, if at the time of effecting the insurance he knew that the vessel had safely completed the voyage and that therefore no risk was involved.

**3. Description of the voyage or duration of risk.** The space provided after the word 'at and from' is for the description of the voyage, *e.g.*, London to Bombay. There is a difference between the words 'from' and 'at and from'. Where the subject-matter is insured 'from' a particular place, the risk does not attach until the ship starts on her voyage insured. Where a ship is insured 'at and from' a particular place and she is at that place in good safety, the policy comes into force immediately the contract is effected. If she is not at that place when the insurance is effected the risk attaches as soon as she arrives there in good safety. These words are inserted to determine whether the contract is one of voyage or time. If the former, the ports or places of departure and destination are also inserted; and if the latter, the date of commencement and termination of the risk are mentioned.

**4. The name of the vessel and captain.** The name of the ship is inserted in the blank space provided, if the policy refers to the ship or voyage. The ship named cannot be changed except in case of disaster to the ship named and that too with the

consent of the insurer. The name of the master or Captain of the ship is rarely given in modern policies.

**5. Commencement of the risk.** "Beginning the adventure upon the said goods, etc. etc." With regard to the ship we have already seen that the risk commences either from the moment she starts on her voyage or at the time she enters the port of departure. This clause indicates that the risk on cargo commences as soon as it is placed on board the vessel and that the underwriter or insurer is not liable for any loss occurring before the cargo is actually loaded, unless there is an express stipulation to that effect. The risk on cargo continues until it is discharged safely and landed in the usual manner.

**6. Permission to touch and stay and deviation.** "To proceed and sail to and touch and stay at any ports or places whatsoever." Although at first glance this clause appears to give full liberty to call at any port or ports, such is not the case, as the law does not permit deviation, except when it is caused through one of the causes excused or expressly provided for in the policy. The gap left in this clause has to be filled in with the name of the particular ports the vessel is at liberty to touch. The vessel has no liberty to call at any other than the customary ports. The port or ports which she can call at must be in the ordinary course of its voyage and in their ordinary geographical order. She must call at such ports only for the purposes of her voyage.

**Deviation.** Deviation is defined as unnecessary or unexcused departure from the usual course or general mode of carrying on the voyage insured, by which the risk is altered. When a ship, without lawful excuse deviates from the voyage contemplated by the policy, the insurer is discharged from liability from the time of deviation even though the ship may have regained her voyage before any loss occurs. Deviation or delay in prosecuting the voyage contemplated by the policy is excused in the following cases :—

- (a) Where it is specially authorised in the policy.
- (b) Where it is caused by circumstances beyond the control of the master and his employer.
- (c) Where it is reasonably necessary in order to comply with an express or implied warranty.
- (d) Where it is reasonably necessary for the safety of the ship or subject-matter insured.
- (e) For the purpose of saving human life.
- (f) For obtaining medical relief for any person on board the ship.
- (g) When it is caused by the barratrous conduct of the master or crew, if barratry be one of the perils insured against.

When the cause excusing the deviation or delay ceases to operate the ship must resume her

voyage with reasonable despatch. Deviation for the mere purpose of saving property is not justifiable.

7. **Valuation.** After the words "and shall be valued at" is inserted the value of the ship or cargo, as may be agreed upon for the purpose of insurance. This is necessary in the case of a valued policy. Where the value is not known or agreed upon, this space is left blank and the value is determined at the time the claim is made.

8. **Perils insured against.** "Touching the adventures and perils .....of the seas." This clause deals with the risks against which the insured is indemnified. The term "perils of the sea" refers only to fortuitous accidents or casualties of the seas and does not include the ordinary action of the winds and waves. Some of the perils comprised within the term are foundering, stranding, loss by collision with another vessel, damage by sea water, storms. The Lloyds policy covers a wide range of risks and includes besides the usual 'perils of the seas', *loss by fire, pirates and thieves, jettison, arrests, restraints and detentions* of all kinds by Kings, Princes and people and *Barratry of the master and crew.*

**Jettison** means the throwing of cargo or the ship's effects overboard to lighten the ship for her preservation in an emergency. *Barratry* includes every wrongful act wilfully committed by the master or crew to the prejudice of the owners of ship or cargo.

9. **Sue and Labour Clause.** With a view to minimise the risk of loss, this clause empowers the insured or his employees to take all necessary steps to safeguard the cargo etc., and to recover from the insurer any reasonable expenses incurred in arresting or minimising the loss covered by the policy.

10. **Waiver Clause.** This clause is in fact a supplement to the "sue and labour clause" and provides that in case of accident either the insurer or the insured may do what he thinks necessary in order to minimise the loss without prejudicing his rights under the policy. This clause is now found in all Lloyds policies.

11. **The Premium or consideration.** The last clause in the policy deals with the undertaking on the part of the insurer duly to fulfil the terms of the contract for a consideration known as the premium. The premium is one of the essentials to a binding contract and is stated in the form of a percentage on the total value of insurance. It is usual to issue the policy to the broker before payment of the premium. In the event of default by the broker in paying the premium to the underwriter, the insurance stands.

**The Memorandum.** The foot-note to the policy beginning with "N.B." is termed the Memorandum and was introduced in 1749 to exempt the underwriters from a crop of small claims in respect of deterioration or damage which may arise not from a peril insured against but from wear and tear, the very perishable nature



of goods carried or through negligence on the part of the shippers. The word 'Average' when used to denote partial loss, is called 'particular average' and when used to denote contribution, it is termed 'general average'. These terms are explained later.

(a) The insurer is not liable to indemnify against a partial loss or damage to the first group of six articles, *viz.* corn, fish, salt, fruits, flour and seed, unless the loss is a general average loss or the ship is stranded. (b) He is not liable to indemnify against a partial loss or damage to the second group of six articles, *viz.*, sugar, tobacco, hemp, flax, hides and skins unless the damage amounts to 5% of the value of the thing damaged. (c) He is not bound to indemnify against partial loss or damage to all other goods, as well as the ship and freight, unless the loss amounts to 3% of the value of goods lost or damaged or unless it is a general average loss or unless the ship is stranded. The words "sunk or burnt" are sometimes added to extend further the liability of the underwriters. By stranding is meant that the ship takes the ground by reason of some accidental occurrence and remains fast for an appreciable time. Mere touching of the ground does not constitute stranding.

It will thus be seen that in all cases the insurer is liable for partial losses below the given percentages, when the loss happens to be a general average loss or the ship is stranded, sunk or burnt. The effect of the Memorandum clause is to free the underwriters altogether from payment for

partial losses on articles mentioned under (a), unless the ship is stranded, burnt or sunk ; and to relieve them unless the damage amounts to 5% on other specified articles or 3% on other goods and the ship and freight.

**Additional clauses.** Besides the above clauses additional clauses have been inserted in policies from time to time to meet special contingencies. The following are some of the most important additional clauses which are found in most of the policies :—

**F. P. A. (Free of Particular Average).** The effect of this clause is to exempt the underwriter from all liability in respect of a partial loss unless any package or packages be totally lost in transit or a loss is incurred by general average sacrifice.

**W. P. A. (With Particular Average).** This means that the insurer is liable for partial losses also.

**F. G. A. (Free from General Average).** The adjustment of general average is determined by the law of the place where the adventure ends or by the law of the intermediate port, if the voyage is broken. The effect of this clause is that when a general average claim arises under the above circumstances, the same will be settled on the basis of the average adjustment in accordance with the foreign law and practice.

**Running Down (R. D.) or Collision Clause.** This clause applies to the insurance of ships and

stipulates that the underwriter shall pay three-fourths of the damage which the insured may be compelled to pay in case of collision with another vessel. No mention is made of collision or running down in the ordinary Lloyds' policy, and therefore no loss of this kind can be recovered in the absence of this clause.

**F. A. A. (Free of all average).** This means that the insurer is not bound to indemnify against any average loss. A policy with this clause is in effect an insurance against total loss only.

**Against all averages.** Under this clause the insurer undertakes to indemnify the insured against all insurable risks.

**Free of Capture and Seizure (F. C. S.).** The effect of this clause is to relieve the underwriter of all liability arising from capture or seizure of the subject-matter in times of war. When this clause is inserted it over-rides the statement of perils insured against already appearing in the policy. An increased premium is charged if the insured wants to protect himself against such risks.

**Continuation clause.** It may sometimes happen that a policy protecting a vessel expires before it has completed its voyage. Protection to meet such a contingency is provided by the insertion of a clause known as the 'continuation clause', which reads; "should the vessel at the expiration of this policy be at sea or in distress or at a port of refuge or of call, she shall, provided

previous notice be given to the underwriters, be held covered at a *pro rata* monthly premium, to her port of destination." Marine policies are not usually issued for more than 12 months.

**Re-insurance Clause.** An insurer may sometimes accept a risk greater than he thinks prudent to retain. He then re-insures with another company or underwriter the whole or such portion of the risk as he thinks desirable. When this is done a clause is inserted on the policy explaining that it is a re-insurance subject to the same clauses and conditions as in the original policy.

### **Kinds of Policies.**

Marine insurance policies though usually in one form are of different kinds and known by different names as follows :—

1. **Voyage Policy.** Where the contract is to insure the subject-matter 'at and from' or from one place to another or others, the policy is called a voyage policy.

2. **Time Policy.** Where the contract is to insure the subject-matter for a definite period of time, the policy is called a time policy. A time policy which is issued for a period exceeding 12 calendar months is invalid. Practically all steamers are insured under this class of policy. A contract for both voyage and time policies may be included in the same policy.

3. **Mixed Policy.** A mixed policy is one which covers the risk for both a specified voyage

and for a specified period. The contract for both voyage and time is included in one and the same policy.

4. **Valued Policy.** A valued policy is one in which the agreed value of the subject-matter insured is specified, *e.g.*, cotton valued at Rs. 10,000. This value need not be the actual value but its insertion is important because it serves as the basis of settlement in the event of a claim. The measure of indemnity is the sum fixed by the policy. In the absence of fraud, the value which an insurer can pay is the cost of the goods, freight and shipping charges plus ten to fifteen per cent to cover anticipated profit. This is a type of policy which is most commonly met with.

5. **Unvalued Policy.** An unvalued policy is one in which the value of the subject-matter of insurance is not stated, but is left to be proved at the time of claim. The measure of indemnity is the insurable value of the subject-matter and is determined by assessment. Only the cost and shipping charges can be recovered, but not anticipated profit as in a valued policy. Such a policy is very uncommon.

6. **Floating Policy.** (Also called Open or Declaration Policy) A floating policy is one which usually describes the insurance in general terms, leaving the voyage and name of ship or ships to be defined by subsequent declaration. Such policies are taken out by merchants who frequently ship goods to the same foreign port during the year. Instead of effecting a fresh contract for each

shipment, one policy covering the whole of the shipments over a period of twelve months is taken. Such policies are usually taken out for round sums say, £ 50,000. The shipper stands to gain from a lower rate of premium and reduction in the stamp duty which results from the elimination of several policies.

**7. Wager Policy.** A wager policy is one in which the insured has no insurable interest nor he has any expectation of acquiring such interest; or one in regard to which the insurer is willing to dispense with any proof of interest. The common name for a wager policy is a "P.P.I." policy meaning "Policy proof of interest" or without further proof of interest than the policy itself. Such policies are legally invalid, but they continue to be executed and like other affairs of honour they are treated with respect as between insurers and insured. For this reason they are sometimes called 'honour policies'.

### **Warranties and Representations.**

**Warranties.** Insurers often make their position more secure by stipulating that certain express warranties shall be inserted in the insurance policy and if the insured fails to comply with these, the insurers will be relieved from liability in case of loss. In addition to these express warranties there are certain implied warranties, which have the same legal force as though they were set out in the policy.

A warranty is a provision by which the insured undertakes that some particular thing

shall or shall not be done or that some condition shall be fulfilled or whereby he affirms, or negatives the existence of a particular state of facts in relation to the contract of insurance. A breach of warranty, whether express or implied, in the absence of any express provision in the policy, renders the contract void and relieves the insurer from liability from the date it is committed.

As we have seen above, warranties are either express or implied. Express warranties are those which are specifically mentioned in the policy and implied warranties are those which, though not expressed, are implied in law by usage or custom of the trade. The following are examples of express warranties generally met with in marine policies :—

- (1) Warranted to sail on or before a given date.
- (2) Warranted free of capture and seizure.
- (3) Warranted free of particular average.
- (4) Warranted as stated in the Memorandum at the foot of the policy.

Every warranty must be strictly and literally fulfilled otherwise the contract may be avoided.

**Implied Warranties.** The following are the important implied warranties usually met with in contracts of marine insurance :—

1. **Seaworthiness.** A ship is seaworthy when she is reasonably fit to encounter the ordinary perils of the seas in view of the adventure insured. In a voyage policy it is implied that the ship shall

be seaworthy for the purpose of the particular adventure not only at the commencement of the voyage but also at every stage in her voyage and must be fully manned and equipped for the adventure.

**2. Non-deviation.** Deviation has already been explained earlier in this chapter. It may again be pointed out here that where a ship without lawful excuse deviates from the voyage contemplated by the policy the insurer is discharged from all liability as from the time of deviation.

**3. Legality.** In common with other contracts, a policy of marine insurance is void if the adventure insured is not a lawful one, and so far as the assured can control the matter, the adventure is not carried out in a lawful manner.

**Representations.** A representation is a mere informal kind of warranty and means a statement made in writing or verbally by the insured to the insurer as to the existence of some material fact which may influence the insurer in accepting the risk. It is, however, not an integral part of the contract itself. In its effect, it differs from a warranty in this that whereas misrepresentation, if untrue, entitles the insurer to avoid the policy only if it is material, a breach of warranty avoids the contract under any circumstance.

A contract of marine insurance is a contract based upon the utmost good faith and if the utmost good faith be not observed by either party, the contract may be avoided by the other party. It follows that the insured must disclose to the



insurer before the contract is concluded, every material fact known to him and which would influence the insurer in fixing the rate of premium or determining whether he will take the risk. A gross mis-statement of the value of the goods insured or an exorbitant valuation amounts to fraud and will entitle the insured to avoid the policy.

### **Double Insurance.**

It means the effecting of an insurance with two or more different insurers for the same loss in respect of the same subject-matter. Such an insurance is not legal, but if taken without any fraudulent intention, the insured can recover on all the policies. Marine insurance is a contract of indemnity and the insured cannot recover more than the actual value of the subject-matter. A merchant not knowing the actual value of the goods may insure them for an approximate amount, and thinking that amount insufficient to cover the risk may effect a second insurance. When the loss occurs he may recover rateably from both the insurers or as much from the first as he can and claim the balance from the second, but the total amount recovered cannot be more than the actual value of the loss. Where two or more parties with distinct interests in the same property insure the property separately on their own account, each upto the full value, each of them can recover the full amount of his separate claim.

### **Assignment.**

A marine policy may be assigned by endorsement or in any other customary manner unless the

terms of the policy forbid it and the assignee may sue upon the policy in his own name. When goods are shipped to foreign countries the insurance policies are generally assigned in favour of the buyers or their agents. The assignment may be made either before or after loss, but the assignor must have an insurable interest in the subject-matter at the time of assignment and the risk must be a continuing risk.

### **Insurance of Freight.**

Freight is payable on the delivery of goods at the destination safely unless there is some contrary stipulation. The shipowner can insure the freight which he is likely to lose in case the ship is destroyed before reaching her destination. Similarly the shipper of goods, particularly the charterer can insure his advance freight against loss in case the ship is lost.

### **Raising of funds.**

The captain of a ship is the agent of the shipowner, and during the course of a voyage when it is not possible for him to communicate with his principal, he has implied authority to take such steps for the safety of the ship and cargo as well as to complete the voyage, as he may deem necessary. When he needs funds for any of these purposes he can raise them on the security of the ship or cargo. In cases of extreme necessity he may also enter into a Salvage agreement on behalf of the shipowners as well as the cargo owners.

**Bottomry Bond.** When the captain of a ship is in urgent need of funds, which he cannot

raise on the shipowners' credit, he raises a loan by executing a bond known as the Bottomry bond. Bottomry bond is a contract whereby the bottom or keel (by which a part being put for the whole, is meant the ship itself) is hypothecated or charged for the repayment of the money borrowed. The peculiar feature of this bond, which partakes the nature of insurance, is that the repayment of the loan with interest is dependent upon the safe arrival of the ship at the destination. If the ship be lost the lender loses all his money. If the captain, after signing a bottomry bond, meets with further disaster or distress and is compelled to raise more money on bottomry bonds before the completion of his voyage, the last bond must be paid first, and the first last of all. The reason for this principle is that it was the money raised by the last bond which enabled the voyage to a successful conclusion, and without it the earlier bonds would not have been entitled to anything.

**Respondentia.** When funds are raised on the security of the cargo only, the bond is known as respondentia. The repayment is dependent upon the safe arrival of the ship in port. As in the case of bottomry bond, the lender loses his money if the ship be lost. The captain must first communicate with the cargo owners and the money should be borrowed exclusively for the benefit of the cargo. This method of borrowing is only justified if all other means of raising funds, short of selling the cargo have failed.

Both Bottomry and Respondentia are old time methods of raising money when navigation

was difficult and the means of communication were very poor. They were the last desperate resort of a ship master without other means of raising money *en route*. The validity of these bonds depended upon the law of the flag, *i.e.* of the country to which they belonged. Nowadays, owing to the facilities afforded by modern methods of communication and remittance, these bonds have become altogether obsolete or rare.

### Marine Losses.

Having considered the different clauses and types of marine policies, we shall now deal with the methods which regulate the adjustment of claims, and the measure of indemnity provided by a marine insurance policy.

**Causa Proxima.** Before dealing with the different types of losses a word may be said in explanation of a most important principle in connection with the recovery of losses. This principle is the well-known legal doctrine of "Causa Proxima", which means that the proximate cause of the loss is to be looked to. The rule that the loss must be traced to a proximate cause has always been rigorously applied in insurance cases. Losses are only recoverable under a marine policy when the *immediate* cause of loss is one of the risks insured against. An insurer is not liable for a loss which is only indirectly caused by the perils insured against. He is not liable for any loss which arises through the wilful misconduct or negligence of the insured, but unless the policy provides, he is liable for any loss caused by a peril

insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew. Further, unless the policy otherwise provides the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured or any loss proximately caused by rats or vermins, or any injury to machinery not proximately caused by maritime perils. Sometimes a loss is brought about by a number of causes, some of which are insured against, and some are not. In such cases, the rule is to determine the proximate or the nearest cause of damage, and that is insured against, the loss must be paid by the insurer. In one case goods were insured against damage by sea water. Some rats on board bore a hole into a zink pipe which caused sea water to enter the ship and damage the goods, the insurers refused to indemnify as they had not insured against damage by rats. The case was, however, decided in favour of the insured as it was held that the immediate or proximate cause of the damage was sea water and not the rats which were only a remote cause.

Marine losses are divided into two main classes, *viz.*, Total Loss and Partial Loss.

**Total Loss.** Total loss is the simplest form of loss arising from a peril insured against and the measure of indemnity for such a loss is the sum insured. It is subdivided into Actual Total Loss and Constructive Total Loss.

**An Actual Total Loss** occurs (1) where the subject-matter insured is destroyed or so damaged

as to cease to be a thing of the kind insured ; *e.g.* when the ship is sunk or cargo destroyed by fire ; or (2) where the assured is irretrievably deprived of its possession or benefit thereof, *e.g.*, the falling of ship or the goods in the hands of pirates ; or (3) when its nature is so changed that it ceases to be a thing of the kind insured, *e.g.* sugar dissolved by sea water. Where a ship concerned is missing and after the lapse of a reasonable time no news of her has been received an actual total loss is presumed. This is termed "Presumed total loss." If a ship is considerably overdue, the Lloyds at the request of the interested party, circularise their signal stations and agents. If no news is received the ship is posted at Lloyds' as missing and a total loss is presumed.

**A constructive Total Loss** occurs (1) where the subject-matter insured is reasonably abandoned because its actual loss appears to be unavoidable ; or (2) where the expenditure necessary to recover it or to preserve it is likely to exceed its value after the expenditure has been incurred. Examples of a constructive loss are :—(a) where the assured is deprived of his ship or goods by a peril insured against and it is unlikely that he can recover them ; (b) when a ship is so damaged that the cost of repairing her would exceed her value when repaired ; (c) when the goods are so damaged that the cost of repairing the damaged goods and forwarding the goods to their destination would exceed their value on arrival.

In determining whether a ship is a constructive total loss or not the circumstances of the case

must be viewed from the point of view of a prudent insured. Thus if the cost of repairs of a ship is greater than the repaired value of the ship plus the freight earned, there is a constructive total loss and no prudent man would incur the required expenditure. The ship would be treated as finally lost.

Example :—

Insured value of ship ..	£ 25,000
Total cost of saving and repairing the ship ..	£ 20,000
Freight earned in consequence ..	£ 2,000
Value of the ship after repairs ..	£ 15,000
	<b>17,000</b>

In this case a total constructive loss is proved as the cost of repairs would amount to £ 20,000 to save only £ 17,000. The claim will be for the full insured value *i.e.* £ 25,000, unless there is a clause in the policy providing for repaired value. The same principle is applied in determining constructive total loss of goods.

The difference between actual and constructive total loss may be explained by a single illustration. Suppose a quantity of tobacco is so damaged by one of the perils insured against, that it no longer exists as tobacco. It is a case of actual total loss. But should it be possible by any process to recondition it, so that it may be sold as tobacco and then, if the cost of reconditioning it is greater than the sum which can be

realised by its sale, there is a constructive total loss.

The claim for actual total loss must be supported by ship's protest by the captain and sworn before a Notary or Consul. In the case of goods the claim must be supported by the Invoice, and Bills of Lading relating to the goods as evidence that the insurance was *bonafide* and the goods were actually on board the ship. The policy must be produced along with notice of abandonment with subrogation or assignment of interest and is usually retained by the insurer after he has settled the claim.

**Notice of abandonment.** In cases of constructive total loss, notice of abandonment must be given to the insurer abandoning all interest in the subject-matter and at the same time claiming a total loss, otherwise the loss will be treated as a partial loss. The notice of abandonment must be given immediately after the insured has received reliable information of the loss. If the insured accepts the abandonment, he settles the claim for a total loss. In case he declines as is usually the case, the insured must legalise the abandonment by filing a suit against the insurer. The effect of a proper notice of abandonment is to transfer all the rights of the insured to the insurer, who is then entitled to stand in the place of the insured as to the subject-matter of the policy.

**Measure of Indemnity.** Subject to any provision in the policy, where there is a total loss



of the subject-matter, the measure of indemnity is as follows :—

(1) In the case of a valued policy, the sum fixed by the policy, which in the case of goods must include prime cost plus expenses of shipping and 10% profit ;

(2) In the case of an unvalued policy the insurable value of the subject-matter lost, which in the case of goods must include prime cost plus shipping charges.

### **Average Losses.**

**Meaning of Average.** The term ‘Average’ is used in a special sense in marine insurance, quite different from its meaning in the ordinary language. It was at first used to signify loss or damage sustained by property at sea and then applied to the contribution required all round in order to make good such loss to the sufferers in certain circumstances. The term is used in connection with two kinds of losses at sea, *viz.*, General Average and Particular Average. Both of these losses are partial losses, as the loss in neither case falls as a total loss on the party whose property suffers the damage.

With the increase in the size and volume of ships and cargoes it was found that the terms of the *Memorandum* imposed unduly severe conditions on the insured. The subject-matter of the policy had to be considerably damaged before the resultant loss reached the required percentage, unless the ship was stranded. This led to the introduction of With Average (W.A.)

policies to avoid the operation of the clauses contained in the Memorandum.

**Particular Average.** A particular average loss is partial loss of the subject-matter insured, caused by a peril insured against, or it means a partial loss or damage accidentally caused to the ship or to a particular parcel of goods by perils insured against, *e.g.* damage by sea water, stranding, collision fire etc. It is a loss arising from damage accidentally and proximately caused by the perils insured against to some particular interest, as the ship alone or cargo alone. A ship may meet with violent weather and sustain serious damage from the heavy seas. This is a case of particular average on ship. During a storm water may get into the hold and damage the cargo. This would be a particular average on cargo. A particular average on freight may arise where part of the goods, say sugar is dissolved by sea water, causing loss of freight to the shipowner. Damage accidentally caused to ship or cargo by stranding, collision and fire also comes within the definition of particular average. Partial loss of goods may be a total loss of part of the goods insured. Particular average losses fall wholly on the owners of the property suffering the loss and can be recovered from the insurers, if insured.

It has been shown earlier that the object of the percentages stated in the Memorandum to Lloyds' policy is to relieve the insurer from the liability for large numbers of small claims. In case of large shipments the percentages mentioned in the Memorandum would mean considerable

sums, the loss of which could not be recovered from the insurer. Further the insertion of the F. P. A. Clause altogether relieves the insurer from liability for partial losses. It has therefore become a general practice to insert in the policy a stipulation such as "average to be payable on each package separately".

**Adjustment of P. A. on cargo.** When goods arrive at destination partially damaged by perils insured against, the depreciation is assessed by an independent surveyor. The depreciation is the difference between the sound value of the goods (*i.e.* the market value had they arrived soundly) and their damaged value (*i.e.* what they realise by sale). This depreciation or loss is then applied to the insured value of the goods damaged and the result is the measure of damage to be claimed from the insurers. It should be noted that the comparison must be made between the gross sound value and the gross damaged value *i.e.*, before deducting expenses of sale etc. This is done in order to avoid any advantage or disadvantage to the insurer arising from market fluctuations. The insurer undertakes to indemnify the insured from loss arising from perils of the seas and not for loss arising from a rise or fall in market values. The insured value is taken into account. When the damaged goods arrive at destination certain charges, such as expenses of auction sale, survey fees etc., have to be incurred and they are recoverable as part of the claim. The following illustration will explain the basis of adjustment described above.

A cargo of 100 bales of cotton was insured for £ 1,000, but 5 bales were found at damaged destination. They were sold and realised £ 5 per bale. The expenses incurred were : brokerage  $\frac{1}{2}\%$ , survey fees 10s. and sales expenses 15s.

The statement of the claim will be as follows :—

Insured value	..	£	1000
Gross sound value of 5 bales	..	£	50
Sale proceeds of damaged bales	..	£	25
<hr/>			
Loss	..	£	25
(Depreciation 50% of insured value)			
Add charges :—			
Brokerage	..	0-	2-6
Survey fees	..	0-10-0	
Sales exp.	..	0-15-0	1-7-6
<hr/>			
Amount of claim	..	£	26-7-6
<hr/>			

**Adjustment of P. A. on ship.** Where a ship has been partially damaged the liability of the insurer is the actual cost of repairing the damage less certain customary deductions for 'new for old' material, unless the policy provides that the Average shall be paid in full without deduction of 'new for old' materials. In settling claims on ship the insured value is not taken into account. The basis of claim is the reasonable actual outlay on repairs provided, of course, the outlay does not exceed the insured value. The outlay on repairs must be supported by actual bills. The insurer is not liable for ordinary wear and tear.

**Adjustment of P. A. on freight.** Freight is the amount payable to the shipowner for carrying goods from one port to another. If it is not advance freight it is payable at destination and only upon the production of the goods for which it is claimed. If a portion of the goods is lost a proportionate amount of freight is lost. The loss of any goods, therefore, involves loss of freight also. The measure of indemnity for the insurer is the proportion of freight lost to the total freight at risk, applied to the insured value of the freight ; or in the case of an unvalued policy to the insurable value of the freight, which means the gross amount of freight plus charges of insurance thereon.

### **General Average.**

The principle of ' General Average ' properly and originally forms part of the obligations that arise out of the contract of affreightment (carriage of goods) and was in force among maritime nations long before the introduction of marine insurance. It was recognised that the master of a vessel must be empowered to throw over board a portion of the cargo or part of the ship, where such a sacrifice of part of the property was found necessary in the interest of the whole. Thus originally the principle of general average was applied to cases of jettison. Its application has now been extended to all losses which are occasioned by a sacrifice of part for the benefit of the whole. It will thus be seen that general average exists quite apart from marine insurance, with which it is only indirectly connected, but a

merchant or shipowner usually insures against his liability to contribute under a general average loss.

A general average is a loss caused by or indirectly consequential on a *general average act*, which occurs where any extra-ordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in the time of peril for the purpose of preserving the property imperilled in the common adventure. Whenever a general average loss occurs the party on whom it falls is entitled to a rateable contribution from other parties interested in the adventure and such a contribution is termed the general average contribution.

The losses which give rise to a general average contribution are divided into two classes : (a) those involving sacrifice of property and (b) those involving expenditure. The first includes the voluntary destruction by the captain of any part of the ship, cutting away the masts, scuttling a vessel to admit water in order to extinguish fire ; jettisoning of cargo to lighten the ship in order to avoid a casualty ; the burning of cargo to provide fuel ; damage to cargo by water used for extinguishing fire. The second includes all extra-ordinary expenditure properly incurred in time of peril for the joint preservation of ship and cargo, *e.g.* the cost of towing a disabled vessel to a port of refuge, expenses on repairs etc.

The essential features necessary for a general average contribution are :—

- (1) There must be a common danger.
- (2) There must be a necessity for the sacrifice.
- (3) The sacrifice must be voluntary *i.e.* intentional on the part of the man and not accidental.
- (4) There must be a real sacrifice and not a mere destruction or casting off cargo or any part of a ship which was already lost or has become valueless.
- (5) The sacrifice must be reasonably and prudently made.
- (6) The expenditure or sacrifice must be extraordinary in its nature.
- (7) The sacrifice must result in the preservation of the ship and cargo.
- (8) The danger must not be one which arises through the default of the party demanding a general average contribution.

**Contributing interests.** The parties for whose benefit the sacrifice is incurred under general average are the shipowner, the cargo-owner and the receiver of freight. They are, therefore, the people who are required to make a contribution towards general average. The owners of the ship contribute to general average on the value of the ship in the condition in which she arrives at the port of destination or at an intermediate port if the voyage is broken up. The owners of cargo contribute on its net arrived market value at the port of destination or at the port where the voyage is broken up, after deducting

all expenses which are incidental to the safe arrival of the goods. The receivers of freight contribute on the net amount of freight saved by the sacrifice. This is the amount of freight at the risk of the shipowner less any expenses which might have been incurred in earning it. The contributions applying to freight at risk are paid by the shipowner. Freight which has been paid by the shipper is included in the value of the cargo, and, therefore, ceases to have a separate contributory value.

It should be borne in mind that the amounts made good in general average themselves contribute to general average loss. The contributors are placed in the same position in respect of loss as the owners of the goods saved, *i.e.*, the owners of the goods sacrificed are treated for the purpose of general average contribution, just as if their goods had been saved. For instance, if the cargo valued at £ 750 including freight paid in advance be jettisoned and the value of the ship, cargo and freight saved by the jettison be £ 6,750, the amount to be made good under general average is £ 750, to which not only £ 6,750 (value of property saved) but also the £ 750 (value of cargo jettisoned) must contribute. Therefore the property saved will contribute  $\frac{9}{10}$  of £ 750 *i.e.* £ 675 ; the owner of the cargo jettisoned  $\frac{1}{10}$  of the same *i.e.* £ 75. The amount which the owner of the jettisoned cargo will get will be £ 750—£ 75 and not £ 750.

**General average and marine insurance.** When a general average loss occurs, the underwriters who have insured the property sacrificed, are



liable to the insured for the payment of the insured value of the property. After having settled the claim, they are entitled to general average compensation less any contribution attaching thereto. They are also liable to make good any contributions which the insured may have to meet towards the general average. But in this case the insured value of the property is taken into account. For instance, if the goods valued at £ 500 have to pay a general average contribution of £ 50 and the goods were insured for £ 500 or more, the insurer will have to pay the full £ 50. If on the other hand the goods were insured for £ 400, the insurer will pay only  $\frac{4}{5}$  of it *i.e.* £ 40.

**G/A Adjustment.** When a general average loss occurs a statement of claim has to be prepared and this is called the Adjustment. This adjustment is prepared by a special class of professional men known as *Average Adjusters*, who are appointed by the shipowners. The adjustment of the contributions due from different interests is made at the termination of the voyage. The law governing the adjustment in the absence of any provision to the contrary, is the law in force at the port of destination or if the voyage is broken up at an intermediate port, the law of that port. The shipowner has a lien on the cargo for the contribution due in respect of G/A.

The principle of adjustment will be clear from the following illustration :—

A ship worth £ 20,000 and having on board cargo valued £ 5,000 (on which freight is due to

the extent of £ 500) runs aground. Half of the cargo is jettisoned and the assistance of another ship is taken to take her off at a charge of £ 50.

The apportionment will be as follows :—

Cargo jettisoned	..	..	£ 2,500
Costs	..	..	£ 50
			£ 2,550

Contribut- ing interests	Contribut- ing Value	Proportion	Contribu- tion
Ship	20,000	20,000/25,500	2,000
Cargo	5,000	5,000/25,500	500
Freight	500	500/25,500	50
£ 25,500			£ 2,550

### Salvage.

This is the reward or compensation paid by a shipowner to a *salvor* for saving or helping to save property and life at sea. The term is also used to express the property saved. The salvor has a maritime lien on the property he has saved as security for the reward due to him. The cargo owners are liable for salvage and in proportion to its value rateably with other property saved. Unless the services of the salvor are successful or of material benefit in saving a vessel, he cannot have any claim for reward. Salvage expenses are recoverable from the insurers in a marine policy.

## TEST QUESTIONS.

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1. "A contract of marine insurance is a contract of indemnity and is founded on the utmost good faith." Explain clearly the meaning of these statements. How far do they apply to life assurance ?

2. Explain the manner in which marine insurance is generally affected in India. State some of the chief clauses of marine policy. What is the doctrine of subrogation as applied to marine insurance ? (I. Com. 1923).

3. How is the contract of marine insurance affected on the Lloyds ? What is (a) a slip, (b) a cover note.

4. What does the term "Insurable interest" mean in the case of a marine insurance policy ? Besides the owners of the ship and the owners of the cargo who else can have insurable interest sufficient to take out a policy ?

5. Explain and illustrate the term "perils of the sea" in a contract of marine insurance.

6. Name and describe the various clauses of a marine insurance policy. What is the effect of the Memorandum clause ?

7. Define and explain the terms : Valued Policy ; Open Policy ; Time Policy ; Floating Policy.

8. What do you understand by warranties in a marine insurance contract ? Name the implied warranties in a marine insurance contract and give one example of an express warranty.

9. Define " Particular Average " and distinguish it from " General Average." How would you class the following risks :—(a) goods in hold damaged by sea water ; (b) propeller damaged by striking a floating wreckage ; (c) sail split by wind, (d) masts purposely cut away when ship in danger, cargo burnt for fuel when coal has run short.

10. What is the effect of the words in the Lloyds policy: "It shall be lawful for the assured, their factors, servants and assigns to sue and labour and travel etc."

11. What is meant by the following in marine insurance:—Particular Average; Subrogation, Causa Proxima, and Jettison?

12. Explain clearly the meaning of Actual Total Loss and Constructive Total Loss. What is the procedure to be followed by the insured when there is a Total Loss?

13. What are the essential features of a General Average Loss. What are the contributing interests in a General Average Loss and how are the claims adjusted?

14. In a General Average sacrifice, how are the contributions of ship, freight and cargo determined?

15. What documents are to be produced by the insured when preparing a claim for a Particular Average Loss.

16. During a voyage a ship and a portion of the cargo are washed over board in a storm. Subsequently a mast is cut away and some more cargo thrown over board to lighten the ship. What are the rights and liabilities of the shipowner and cargo owner?

17. "Ship warranted free, from average under 3 per cent unless general or the ship be stranded". Explain the effect of the insertion of this clause in a marine policy.

18. From the following particulars, draw up a statement of Particular Average. Sound value of goods £ 652; value in a damaged condition £ 428, insured value, £ 680; charges in connection with survey etc., £ 10.

19. Discuss the principle of subrogation as applied to a contract of marine insurance and its effect upon the liabilities of the insurer. Two ships X and Y belonging to two different owners come into collision which was due to the negligence of those in charge of Y. The owner of X has insured her for £ 50,000 and receives £ 10,000 as damages

from the owner of Y. How much can he recover from his insurer ?

20. Can a marine insurance policy be assigned ? If so, how ?

21. Explain :—

Abandonment, Average Statement, Jettison, Salvage, Deviation.

22. Distinguish between Bottomry and Respondentia Bonds. Discuss fully their peculiar features.

23. In a valued policy, what items is the insured entitled to include while arriving at the value of his goods ? Would it make any difference if the valuation was to be made in case of loss on an 'open' policy ?

24. What is meant by "Insurance against total loss" in a marine policy ? Into how many classes total loss is divided ? What documents are necessary to substantiate a claim for such loss ?

25. Define and explain :—

P. P. I. Policy, Insurable freight, Lost or not lost clause, as applied to marine insurance policies.

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## CHAPTER XIII

### FIRE INSURANCE ETC.

The business of fire insurance is of more recent growth than that of marine insurance, but the principle on which it is based, *viz.*, the distribution of the losses of the few over the whole community, was put into practice many centuries ago. The practice of individual underwriting was in vogue among the Lombards in Italy long before fire insurance on modern lines was introduced in England. The first English Fire office was established in 1681 shortly after the Great Fire of London. This was followed by the formation of numerous other fire insurance offices. Recent years have seen the amalgamation of several companies to form corporations having enormous funds and undertaking all kinds of insurance business.

**Its Nature.** Fire insurance is a contract whereby one party undertakes in return for a consideration, known as the premium to make good to the other any loss or damage by fire which may happen during a particular period to a specified property not exceeding the sum named as the limit of insurance or of each item thereof.

The fundamental principle of fire insurance, unlike that of life assurance, is one of indemnity only. The liability of the insurers under a fire policy is limited to the market value of the property at the time of its loss or destruction. The

maximum amount which can be claimed is fixed by the parties to the contract, but this amount or the cost of the property is not necessarily the measure of the liability of a fire office under its policy. In practice the cost price is regarded as the basis only for arriving at the value at the time of destruction, after due allowance for depreciation through wear and tear. The method of settling claim is usually stated in the policy, which also contains an Arbitration Clause for settling any dispute that may arise between the parties at the time of settlement. Under 'Valued Policies', however, the question of the actual cost of the articles at the time of fire does not arise, as a stated value for each article is agreed upon when the contract is settled.

**Difference between Life Assurance and Fire Insurance.** In a contract of life assurance both the elements of risk and investment are present ; in a contract of fire insurance there is only one element viz. indemnity against risk. The amount payable is only the amount of actual loss, if it happens. A fire contract is only a contract of indemnity pure and simple. A Life policy is issued for a much longer period than a fire policy. The period of a fire policy is usually not more than 12 months, after which it must be renewed with a fresh premium. The classification of risks in fire insurance is much more elaborate and complicated than in life assurance and hence the rates of premium in a fire contract differ very much in different cases. A life policy acquires a surrender value if it has been in force for two or three years and

can be assigned for a valuable consideration. A fire policy has no surrender value and the risk covered by a fire policy can only be transferred with the consent of the company issuing the policy. In a contract of Life assurance the insurable interest must be present only at the commencement of the policy, but in a fire insurance the interest must be present both at the time of commencement of the risk and the time the claim arises.

The contract of fire insurance also differs from a contract of marine insurance, although both of them are essentially contracts of indemnity. Under the former the insurer agrees to indemnify the assured against actual loss only, whereas under the latter, in case of total loss, the insurer has to pay the actual amount specified in the policy which includes prime cost, plus shipping charges and a reasonable percentage of profit.

**The principle of insurance.** We have already seen that life assurance premiums are computed on the basis of observed duration of life at different stages as disclosed by mortality tables and by the actual experience of the life offices themselves in respect of lives assured. Fire premiums are assessed in a similar manner. Statistics are collected relating to the number of fire occurring in particular areas or in particular trades, as well as the extent of average occurring in each area or trade over long periods of time, and averages are struck. Though not possessing the exactitude of the tables on which life assurance premiums are calculated, the tables prepared by fire offices are



sufficiently near for all practical purposes. The experiences in different trades and localities are carefully watched. The beneficial effects of fire appliances in extinguishing and preventing fire as well as the extra risks arising from dangerous manufacturing processes or particular surroundings upon the insured property are carefully noted. Premiums are reduced where there is a reduction in risk and increased where the chances of risk are greater. Since fire policies are yearly contracts, the revision of premiums is possible at the end of every year.

The theory upon which fire insurance is based is the distribution of the losses of the few over the whole community. A number of persons combine together and by contributing fixed annual sums apportioned to the character of the risk, pay for the damage caused by fire to the whole group of the insured. The premiums collected in the aggregate are equal to the total of the losses likely to occur and the inevitable expenses of management. The expenses of management include the cost of procuring business, administration expenses and a fair return to shareholders.

**Good faith.** The essence of fire insurance like other contracts of insurance is good faith on the part of the insured. The rate of premium payable by the insured depends upon the fire hazard of the subject-matter of insurance. Hence in order to enable the fire office to compute an appropriate rate it is essential that they should be acquainted with all material facts or circumstances relating to the property insured which may

have any bearing upon a proposal. Any omission in regard to the construction of building, nature of business carried on, the materials in use, will vitiate the contract. Good faith must be observed throughout the period covered by the policy covering the contract.

**Insurable interest.** In common with all kinds of insurance the person desiring to effect an insurance against fire, must have an insurable interest in the subject-matter of the insurance, *i.e.* he must be in such a position that he benefits by the existence of the property or goods insured and will suffer a pecuniary loss by its destruction. Such interest may be either legal or equitable. A *legal interest* exists where the insured is the actual owner of the property. An equitable interest is present where the actual ownership falls short of actual ownership. For instance, a person who has advanced money on a property or has agreed to purchase it has an equitable interest in the property. An owner can insure his own goods ; a mortgagee can insure to the extent of his interest in the property ; a trustee can insure the property which he holds in trust ; an agent can insure the goods belonging to his principal ; a common carrier can insure the goods which came into his possession in the ordinary course of his business ; and an insurance company can re-insure the property which has been insured with it.

**Kinds of fire offices.** Fire insurance business is now largely in the hands of joint stock companies having large funds at their disposal, which enable

them to undertake heavy risks and to pay the amounts they promise. Their reserve funds are so large that it is very rare for an insurance company to fail. These fire offices, as they are called, are divided into two classes : (1) Tariff offices and (2) Non-Tariff offices. The companies that are members of the Tariff Association are known as *Tariff Offices*. The Tariff Association fixes the rates of premium for the different descriptions for the more serious types of risks, and the members are, by agreement bound to charge the rates so fixed. The Association is a powerful organisation which secures uniformity of rates for the different kinds of risks, prevents undue competition among the member offices, and thus keeps up the rates. The non-tariff offices, on the other hand, are independent concerns having nothing to do with the Tariff Association. They assess the various risks on their merits and charge their premiums accordingly. Offices of this type are neither very numerous nor very powerful.

**How insurance is effected.** The first step in effecting an insurance against fire is to fill up a proposal form as in the case of other types of insurance, and to forward it to the company. The proposal being the basis of the contract, it is important that each question on the form should be answered in unambiguous language. The subject-matter of insurance must be accurately described and all information necessary to enable the company to form an accurate estimate of the risk must be given. Fraudulent statements and concealment of material facts invalidate a contract

of fire insurance. Although a verbal fire insurance contract is enforceable at law, it is the usual practice to make a proposal in a printed form supplied by the issuing company.

In making a proposal to cover a trade risk, separate amounts must be placed upon the building, fixtures and fittings, stock-in-trade, and in cases where manufacturing process is carried on, the values placed on machinery and plant should also be clearly stated. Fire insurance being a contract under which an insured pays a comparatively low premium for a very high protection, insurance companies do not entertain proposals from unknown persons. Where a proposer is not known to the company he is usually asked to furnish some reasonable evidence of respectability.

As soon as the company has considered the proposal and fixed the annual premium and the proposer has paid it, the company issues a cover note which protects the proposer in terms of the company's policy, till the risk has been accepted and a policy issued or till the company has expressed its unwillingness to accept the risk. In cases of simple risks, *e.g.* dwelling houses, or goods warehoused in a well-known depository, a company will at once quote a premium and on receipt of it proceed to issue a policy. In the case of large insurances, *e.g.* business premises where the assessment of premium depends upon a number of elements, the risk is first surveyed by the company's surveyor, who reports thereon to the company. On receipt of this report the proposal

is accepted, the rate of premium determined or else the risk is declared. The cover note already issued holds the intended insured protected, pending the survey in the understanding that a premium paid on the basis of the rates to be decided for the time on the risk.

**The policy.** When the risk is accepted by the company the policy is prepared and delivered to the insured. It is stamped and signed by the representative of the company and contains the name and address of the insured ; details of the property covered together with its situation ; and the sum insured indicating the limit of indemnification granted by the company.

The Tariff offices have a standard form of policy for trade risks, the conditions of which have been adopted by most of the non-tariff offices. A specimen form of policy issued by the Universal Fire Insurance Office is given on the next page.

A *resume* of the conditions incorporated in the contract is usually printed at the back of the policy. The following are the main conditions which appear in the standard form of policy :—

1. Misdescription, misrepresentation, or omission renders the policy void.

2. Changes in the risk must be notified to the company and endorsed on the policy.

3. The policy does not cover :—

Goods held in trust or on commission.

Form of Fire Policy.**UNIVERSAL FIRE INSURANCE OFFICE.**

No. ....	SUM INSURED Rs. ....
FIRST PREMIUM Rs. ....	RENEWAL PREMIUM Rs. ....
From .....	Due .....

**THIS POLICY OF INSURANCE WITNESSETH**

that .....  
 .....  
 hereinafter called the Insured, having paid to the UNIVERSAL FIRE  
 INSURANCE OFFICE (*hereinafter called the Company*) the sum of.....  
 .....  
 for insuring against loss or damage by FIRE, as hereinafter mentioned  
 the property hereinafter described, in the several sums following,  
 namely—

Ra.

|

THE COMPANY HEREBY AGREES with the Insured (but subject to the  
 Conditions endorsed hereon, which are to be taken as part of this  
 policy) that if the Property herein described, or any part thereof, shall  
 be destroyed or damaged by Fire at any time between the.....  
 day of..... and Four o'clock in the afternoon of the.....  
 day of..... or at any time afterwards, so long as the Insured  
 or..... Representatives in interest shall pay to the Company,  
 and it shall accept, the sum required for the renewal of this Policy,  
 on or before the.....day of.....in that and each succeed-  
 ing year, the Company will, out of its Capital, Stock, Funds, and  
 Property pay or make good to the Insured the value, at the time of  
 the happening of such fire, of the Property so destroyed, or the  
 amount of such damage, to an amount not exceeding in respect of the  
 several matters herein specified the sum set opposite thereto respec-  
 tively, not exceeding in the whole the sum of.....rupees.

PROVIDED that the Capital, Stock, Funds, and Property of the  
 Company shall alone be answerable in respect of any claim made under  
 this Policy and that the only liability of the Shareholders shall be to  
 contribute to the funds of the Company the amounts unpaid on the  
 shares held by them respectively.

IN WITNESS WHEREOF I (*being one of the Directors of the said Com-  
 pany*) have hereunto set my hand and seal this.....day of.....

China, glass, jewels, manuscripts, drawings, musical instruments, etc.

Patterns, models, designs.

Deeds, bonds, bills, of exchange, money, documents of title to goods, etc.

Explosives or loss through explosion.

Loss through spontaneous heating.

Loss through earthquake, foreign enemy, riot, etc.

But loss through explosion of coal-gas and loss by lightning are covered.

4. Company's printed receipt is the only valid one.

5. If property insured passes to another person, policy ceases to be in force unless the company endorses policy to the contrary.

6. Immediate written notice of loss is required, and written particulars of claim.

7. Benefit forfeited if claim fraudulent.

8. Reinstatement of destroyed or damaged property may be made instead of payment for the loss.

9. Company may enter premises where loss has occurred and may remain in possession or remove property insured.

10. Company liable only for a rateable contribution if the loss covered by this policy is also covered by another.

11. If other insurance of same property is subject to average, this also is subject to average.

12. Disputes about claims to be settled by arbitration.

13. If policy becomes void, money paid in respect of it is forfeited.

14. Insured to assist company to enforce any claim the company may have on other persons.

15. Non-compliance with any warranty will be a bar to any claim under the policy.

**Kinds of Policies.** The most common types of fire policies are :—(1) Specific, (2) Floating, (3) Average, and (4) Valued.

**A Specific Policy** is one which insures any one risk for a definite sum payable to the insured if the loss comes up to that amount irrespective of the total value of the subject-matter. For instance, if goods worth Rs. 3,000 are insured for Rs. 1,000 and a fire occurs doing damage to the extent of Rs. 1,000, the amount payable is Rs. 1,000 ; notwithstanding that the goods were insured for one-third of the value.

**A Floating Policy** is one which covers property in different localities which are generally limited in the policies to certain specified premises or areas. Such policies are usually taken out where the goods insured are of a fluctuating character *i.e.* where some of them may be removed any day and replaced by others or where they are lying in different warehouses or godowns.



**An Average Policy** is one which contains the average clause, the effect of which is that the liability of the insurer is in the same proportion to the loss as the amount of insurance bears to the value of the property at the time of the fire. Suppose, goods worth Rs. 4,000 are insured for Rs. 3,000 under an average policy. Fire occurs and goods worth Rs. 2,400 are burnt. The amount payable by the company will be only  $\frac{3}{4}$  of Rs. 2,400 *i.e.* Rs. 1,800 and not Rs. 2,400. The object of the average clause is to make the insured bear a rateable portion of any loss.

**A Valued Policy** is one in which the property to be insured is agreed at a certain value. The value declared in the policy is the amount which the insurance company will have to pay in the event of a total loss irrespective of the actual value of the property at the time of the loss. Such policies are advantageous for insuring valuable works of art, and similar property, *e.g.* pictures, books, furniture etc. Such policies are very much open to abuse, as they tend to destroy the fundamental basis of fire insurance *viz.* indemnity. They are issued by fire offices to maintain the growing goodwill of the policyholders. The issue of such policies is disadvantageous from the point of view of both the insured and the insurer. In the first place, there is no provision made for appreciation in the value which may take place during the currency of the policy. In the second place depreciation and undertaking to pay the values as stated in an inventory in the event of a loss involves the payment in excess of the

actual values of the goods and at the same time provides an incentive to an unscrupulous insured to fire-raising.

**Loss of profits policies** which indemnify traders against consequential loss following the outbreak of fire. When a fire takes place there is not only the loss of stock and property but there is also an interruption of business which involves loss of profits and the usual establishment expenses. Under the *Loss of Profits or Consequential Loss Insurance*, the company undertakes to pay the insured an amount representing loss of profits (on the basis of turnover) and increase in cost of working necessarily incurred to maintain the business on its pre-fire level.

**Rates of Premium.** The risks under fire are usually divided into three classes, viz., (1) ordinary or common risks, (2) hazardous, and (3) doubly hazardous. The rates of premium are the lowest for the first class and highest for the third. It should be noted that the premium for any risk depends upon several elements, such as the construction of the building; the nature of the trade carried on; method of lighting, nature of surroundings; the nature of goods sold in a shop etc. External hazard is an important factor in determining the premium. The surrounding or adjacent buildings may sometimes be of such a character that they make the particular risk uninsurable. Insurance companies have certain rates for each trade and these are charged for normal risks, where most favourable conditions

prevail. They are increased in accordance with the varying hazards attaching to each risk. Reductions are, however, made where special precautionary measures, such as installation of sprinklers and other fire extinguishing appliances are adopted to deal with an outbreak of fire.

A fire policy is usually issued for a period of one year and is renewable usually by payment of a fresh premium. Insurance companies usually allow 15 days after the expiration of the period for the payment of the premium for a further period. These days are known as the days of grace. If these days of grace are allowed for by the policy and a fire occurs, during this extra time the insurance holds good and the insurance company is bound to indemnify the insured. A policy may, however, be taken out for less than 12 months or for a period exceeding 12 months. The arrangement for renewal is the same as for annual policies. Policies of the first type are known as *Short Period Policies* and those of the latter the *Long Period Policies*. Long period policies are generally effected in respect of buildings.

**Loss by fire.** Loss by fire means loss or damage resulting from actual ignition, and only this is covered by fire policies. If actual fire is the proximate cause of the loss so that fire is accidental, or fortuitous in its origin so far as the insured is concerned, the loss is covered by the policy. The special Municipal Acts of different provinces in India lay down that "any damage

occasioned by the fire brigade in the due execution of their duties shall be deemed to be a damage by fire within the meaning of any policy of insurance against fire." Damage due to lightning is covered. In short a fire policy covers all losses directly caused through fire and excludes others unless they are specifically provided for in the policy. Nothing can, however, be recovered if it is proved that the loss was caused through the malicious acts of the insured himself. Losses caused through fire caused by spontaneous fermentation, earthquakes, riot, civil commotion, war or rebellion are not generally covered. Other types of losses not covered by fire are given in clause 3 of the conditions mentioned earlier.

**Reinstatement Clause.** We have seen earlier that clause 7 of the policy gives the insurance company the right to re-instate the property damaged or destroyed instead of paying for the loss in cash. The necessity of this clause arises from the fact that sometimes people exaggerate the effects of fire and put forward exaggerated claim against insurance companies. Claims are vigorously scrutinised and challenged upon the slightest suspicion of fraud.

**Double insurance.** Another clause which appears in a fire policy exempts the company from liability for more than a rateable proportion of the loss or damage where more than one policy is effected by the insured or by any other person. It further provides that if any subsisting policy or policies are subject to average, then all are subject to average.

**Assignment of Policy.** A fire insurance is a contract purely between the insurance company and the insured. Hence the policy can only be assigned with the consent of the company. A policy of insurance does not pass with the sale or assignment of the property on which it is effected. Transfer or assignment with the consent of the company is the only way to give an effective right to an assignee in the benefit of the policy.

Sections 49 and 135 of the Transfer of Property Act deal with the assignment of fire policies in India. A fire policy may be assigned by endorsement or other writing. Section 135 runs : " Every assignee by endorsement or other writing of policy of marine insurance or of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy had been made with himself".

**Claims and adjustment of losses.** The insured should carefully go through all the conditions stated in the policy, otherwise he may find that he has lost the benefit of the insurance owing to his failure to comply with the terms of the contract. For instance, it is generally stipulated that whenever a loss or damage occurs notice shall be given for the same in writing to the insurance company, and full particulars of the damage in writing delivered within such period as may be

allowed in the contract. In the absence of any notice communicated to the company the insured has no legal right to claim any compensation for loss.

Therefore, immediately on the happening of the loss by fire the insured must serve a written notice on the insurance company. This should be followed by a written statement on form supplied by company) of the loss or damage, with full particulars of the article damaged or destroyed. All claims for loss are required to be supported by such vouchers, proofs and explanations as may be necessary and may even be accompanied by statutory declarations as to the limit of the statements submitted. On the occurrence of a fire the obvious duty of the insured is to adopt every available and effective means for extinguishing it or conferring it to a certain area. In order that no bogus claims may be paid, an insurance company has the right to investigate thoroughly into the origin of the fire, the condition of the building, the value of the subject-matter alleged to have been destroyed or damaged and other matters which can in any way affect its liability. The company has power in case of fire by its authorised officer or servant to enter the premises where fire has occurred and to remain in possession of any damaged property contained therein for a reasonable time.

The actual loss sustained through fire can only be ascertained by careful enquiry. Claims involving comparatively small amounts are

settled without delay, but in the settlement of heavy claims it is usual for insurance companies to appoint an independent firm of assessors or valuers to assess the amount of loss. The business of the assessors is to assess fire claims on behalf of insurance companies. They receive claims, conduct all correspondence and negotiations and make all such enquiries arising out of the matter as may be necessary for settling the claim.

It should be noted that if more than one fire occurs in respect of the same insured property during the course of a single year, the company is not liable to pay in the aggregate a sum in excess of the original sum insured. For instance, if property is insured for Rs. 5,000 and a fire occurs to the extent of Rs. 3,000, this amount will be paid. If a second fire occurs during the same year, totally destroying the property, the company will not pay more than Rs. 2,000, unless additional premium has been paid to re-instate the amount of the first loss.

**Arbitration Clause.** This clause which appears in all fire policies, provides that in the event of disagreement between the company and the insured, where there has been no fraud the difference shall be submitted to the arbitration of two important persons, one chosen by the company and the other by the insured. It is further provided that should the arbitrators disagree then the matter shall be referred to an umpire, selected by the arbitrators and his award shall be final and binding upon both the parties.

### **Accident Insurance.**

Although in a sense nearly all insurance is 'accident insurance' it is customary, however, to use the term "accident insurance" to cover the rather numerous miscellaneous types of insurance, which do not come within the three definite types already discussed. These miscellaneous types of insurance are of great and growing importance especially in western countries in as much as they represent developments which result from the ever present desire to offer a complete range of policies covering all the perils arising under modern conditions of life.

The term "accident insurance" originally applied to personal accidents insurance, which was the earliest form of accident insurance business introduced in England. Accident insurance is now split up into several branches, each of which meets a definite requirement. For instance, an employer has a curious liability under the Workmen's Compensation Acts, in respect of accidents to his labourers, and this can now be covered by taking a Workmen's Compensation Policy. The depredations of burglars have emphasised the need for Burglary Insurance. More recently the increase of motor transport has resulted in a rapid growth of motor insurance in all the civilised countries. The popularity of accident insurance has been so great in western countries that there is hardly any householder in these countries who does not possess an accident policy in one form or other. The following are the important branches of accident insurance :—



**1. Workmen's Compensation Insurance** under which an insurance company undertakes to indemnify the employer against his legal liability under the Workmen's Compensation Acts in respect of accidents happening to his work people and the cost incurred in contesting or settling claims made.

**2. Personal Accident and Sickness Insurance** under which an insurance company agrees to indemnify the insured in the event of his sustaining any bodily injury caused by violent external and visible means as well as sickness of all kinds.

**3. Third Party Liability Insurance** under which an insurance company undertakes to indemnify the insured against his legal liability to pay compensation for injury to persons or damage to property of the public arising from negligent driving, negligence of employees, lack of professional skill etc.

**4. Motor Insurance** under which an insurance company undertakes to indemnify the owner of the car against damage of car through accidents as well as third party liability.

**5. Burglary Insurance** under which an insurance company undertakes to indemnify the insured against burglary, house-breaking, including theft of cash, household effects, ornaments and jewellery.

**6. Fidelity Guarantee Insurance** under which an insurance company undertakes to indemnify the insured against financial loss arising from

theft, embezzlement, or forgery committed by his employees.

**7. Miscellaneous.** There are various other types of accident insurance which are transacted by some insurance offices but they are not of sufficient importance to be described here. They include live stock, aviation, plate glass, hail storm etc. Some companies also issue the so-called "comprehensive" policies which provide the insured with a combined cover against risks or loss from fire, burglary, and other enumerated perils.

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## TEST QUESTIONS.

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1. What do you understand by the statement that a policy of insurance is a contract of indemnity? Explain, in connection with the fire insurance, the meanings of :—

(i) Insurable interest; (ii) Average Policy; (iii) Tariff System.

2. A person is insured for £ 1000 and the insurer pays out in January the sum of £ 800 in respect of a claim. In July of the same year another fire occurs and the subject-matter of the insurance is completely destroyed. What is the position of the insured and the insurance company?

3. In claiming compensation under a Fire Policy, what is the procedure?

4. What ought to be done by an insured person, if he removes insured property from one location to another, or effect any structural alterations in the building by which the risk of fire either to building or goods is increased? What,

on the other hand ought the insurer to do if the changes result in a diminution of the risk ?

5. Point out the significance of fire and marine insurance to the commerce and industry of a country.

6. Explain Specific Policy, Average Policy, Valued Policy and Floating Policy in fire insurance.

7. What are the provisions about payment by the underwriters when there are more than one fire in respect of the same insured property during the insurance period and when there are more than one policy in existence for the same risk ?

8. How is a claim to be made and how is it settled in Fire Insurance ?

9. "The insurer upon payment of the amount due, is entitled to be subrogated to all the rights of the assured". Explain the above rule with special reference to contracts of Fire Insurance.

10. What is meant by 'insurable interest' in a contract of Fire Insurance ? How can a Fire Policy be taken out and from what moment of time does the risk in it begin to run ?

11. (a) What is meant by an "insurable interest" in relation to fire insurance ? Has the mortgagee of a house such an interest ? Or a warehouseman in respect of his customers' goods ? Or the holder of all the shares in a company in respect of the companies property ?

12. A insured for Rs. 2,000 his house worth Rs. 5,000 against fire. The house is damaged by fire and the total loss is estimated at Rs. 1,500. What amount can A recover from the Insurance Company ?

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## CHAPTER XIV.

### LAW OF CONTRACTS.

The law is nowadays a matter of such intricacy that no sound businessman would attempt to solve important legal questions without consulting his lawyer. There are, however, certain elements of law which indicate where difficulty is likely to arise and where legal advice should be sought. These should be known to every man who constantly comes into legal relations with other parties in the course of his business. An acquaintance with even such a bare outline as is proposed to be given in this and the following two chapters will enable a businessman to avoid many of the difficulties which are likely to involve him in a considerable loss of time, money and effort.

The law of contracts in India is contained in the Indian Contract Act of 1872. The Act forms the basis of commercial law as it governs all commercial transactions and dealings in commercial properties between different people. Besides the special forms of contract *viz.*, those relating to Sale of Goods, Partnerships, etc. which are now contained in separate enactments, the general principles of the Law of Contracts govern other branches of Mercantile Law, *e.g.*, the Law of Insurance, the Law of Carriers, etc. It should, however, be noted that though certain branches of commercial law are governed by special

enactments, they are not absolutely independent of the Contract Act. Besides dealing with the general principles on which all commercial contracts are based, the Indian Act contains the law relating to contracts of agency, bailment and indemnity and guarantee.

**What is a contract.** A contract is an agreement by free consent of parties, competent to contract, for a lawful consideration and with a lawful object.

**An agreement** is every promise or every set of promises, forming the consideration for each other. It includes an offer made by one party (called the promisor), and the assent thereto or acceptance of the same by the other party (called the promisee). It also includes a consideration for the promise. A consideration is the return or equivalent for which a promise is made. When an agreement is such that it is enforceable at law, it becomes a contract.

An agreement is a wider term than a contract. It may exist without any legal obligation. On the other hand, a contract is the result of an agreement and obligation combined. All contracts are agreements, but all agreements are not contracts. An agreement can be a contract only when there are competent parties, consideration, free consent and legal object.

**Void agreement.** An agreement is void when both the parties are under a mistake as to an essential matter of fact. It has no legal existence and is, therefore, not enforceable at law.

**Voidable agreement.** A voidable agreement is one which is enforceable by law at the option of one or more of the parties thereto but not at the option of other or others.

**Essentials of a valid contract.** The essentials of a valid contract may be summarised as follows :—

(1) There must be an agreement, *i.e.*, offer and acceptance.

(2) The consideration for and the object of the agreement must be lawful.

(3) The parties must be competent to contract.

(4) The agreement must be made by the free consent of the parties.

(5) The agreement must not come within the classes of agreements which are expressly declared to be void.

(6) The agreement must be in writing, attested and registered, if so required by any law in force in British India.

1. **Offer and Acceptance.** When one person signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a *proposal*. When a person to whom a proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise. The person making the proposal is called the *promisor* and the person accepting the proposal

is called the *promisee*. The offer must be intended to create, and must be capable of creating legal relations between the parties for the purpose of a valid agreement.

Every contract springs from the acceptance of an offer. The acceptance may be either by words or by conduct. When it is made in words it must be absolute and unqualified. If there is a variation in the acceptance, the acceptance is not an acceptance, but a counter proposal, and there is no contract until this counter proposal is in its terms accepted by the original proposer. The acceptance of a proposal is the acceptance of all its terms.

### **Communication, acceptance and revocation of proposals.**

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. For instance, *A* proposes by letter to sell a house to *B* at a certain price. The communication of the proposal is complete when *B* receives the letter.

The communication of an acceptance is complete (a) as against the proposer when it is put in course of transmission to him so as to be out of the power of the acceptor, (b) as against the acceptor, when it comes to the knowledge of the proposer. If in the above example, *B* accepts *A*'s proposal by a letter sent by post the communication of the acceptance is complete as against *A* when the letter is posted ; as against *B* when the letter is received by *A*.

The communication of a revocation is complete as against the person who makes it when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it. It is complete as against the person to whom it is made, when it comes to his knowledge. If in the above example, *A* revokes his proposal by telegram, the revocation is complete as against *B* when *B* receives it. If *B* revokes his acceptance by telegram, *B*'s revocation will be complete as against *B* when the telegram is despatched and as against *A* when it reaches him.

A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer but not afterwards. An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor but not afterwards.

**Modes in which offer can be revoked.** A proposal may be revoked in any of the following ways :—

(1) By the communication of the notice of revocation by the proposer to the other party.

(2) By the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time without communication of the acceptance.

(3) By the failure of the acceptor to fulfil a condition precedent to acceptance.



(4) By the death or insanity of the proposer if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

2. **Consideration.** Consideration is the essential requisite in all contracts. Every contract must be supported by adequate consideration, otherwise the agreement to that effect will be void. The definition of consideration under the contract act is : “ When at the desire of the promisor the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise. Consideration is “some benefit, right, interest accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other. The consideration may be past, present or future.

There are two parties to a contract and they make reciprocal promises to one another. From this it is clear that what is consideration for the promise from the point of view of one party is the object of the promise from the point of view of the other and *vice versa*. Thus the object and consideration are different names of the same thing viewed from the different points of view of the parties.

**Unlawful consideration.** The consideration or object of an agreement is lawful unless :—

- (1) It is forbidden by law, or

(2) is of such a nature that, if permitted, it would defeat the provision of any law, or

(3) is fraudulent, or

(4) involves or inflicts injury to the person or property of another, or

(5) the court regards it as immoral or opposed to public policy.

In each of these cases the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

**Consideration when dispensed with.** As we have seen before, agreements without consideration are void : but section 25 of the Contract Act provides three exceptions to this general rule. These exceptions are :—

(1) When agreement is expressed in writing, and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other.

(2) When agreement is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compelled to do.

(3) When a promise is made in writing, and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt of

which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Nothing in this connection shall affect the validity as between the donor and donee, of any gift actually made.

An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

### *Illustrations.*

(1) *A* promises, for no consideration, to give to *B* Rs. 1,000. This is a void agreement.

(2) *A*, for natural love and affection, promises to give to his son, *B* Rs. 1,000. *A* puts his promise to *B* into writing and registers it. This is a contract.

(3) *A* finds *B*'s purse and gives it to him. *B* promises to give *A* Rs. 50. This is a contract.

(4) *A* supports *B*'s infant son. *B* promises to pay *A*'s expenses in so doing. This also is a contract.

(5) *A* owes *B* Rs. 1,000 but the debt is barred by the Limitation Act. *A* signs a written promise to pay *B* Rs. 500 on account of the debt. This is a contract.

(6) *A* agrees to sell a horse worth Rs. 1,000 for Rs. 10. *A*'s consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(7) *A* agrees to sell a horse worth Rs. 1,000 for Rs. 10. *A* denies that his consent to the agreement was freely given.

The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not consent was freely given.

**3. Parties competent to contract.** The parties to a contract must be legally competent to

enter into a contract. The persons who are competent to contract are those who have attained the age of majority according to the law to which they are subject; who are of sound mind and are not disqualified by any law to which they are subject.

(1) **Minor.** A minor is a person who has not completed the age of 18 years. An exception is, however, made in the case of persons who have guardians, appointed or declared by a court, and are under the charge of the Court of Wards. In their case the age of majority is attained on the completion of 21 years.

A contract by a minor is void, and cannot be enforced except where the minor is supplied with necessities by a person, in which case his estate is liable for the payment.

(2) **Persons of unsound mind.** A person is said to be of sound mind when at the time of making a contract he is capable of understanding and forming a rational judgment as to its effect upon his interests. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind; and a person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. The contract of a lunatic, like that of a minor, is void.

Certain persons are incapacitated from contracting by political or professional status, *e.g.*, aliens, foreign sovereigns, persons undergoing

sentence for treason or felony, barristers etc. Corporations, being artificial persons, cannot contract except through their agents.

**4. Free consent of parties.** Consent is defined by section 13 of the Act thus : Two or more persons are said to consent when they agree upon the same thing in the same sense. To make a contract valid, mere consent is not enough, but the consent must be free. Consent is said to be "Free" when it is not caused by (1) coercion, (2) undue influence, (3) fraud, (4) misrepresentation or (5) mistake.

(1) **Coercion.** It is the committing or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. An agreement to which consent is obtained by coercion, is voidable at the option of the person whose consent is so obtained.

### *Illustrations.*

*A*, on board an English ship on the high seas, causes *B* to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code.

*A* afterwards sues *B* for breach of contract at Calcutta.

*A* has employed coercion, although this act of his is not an offence by the law of England, and although section 506 of the Indian Penal Code was not in force at the time when, or place where the act was done.

(2) **Undue Influence.** A contract is said to be influenced by "undue influence" where the relations between the parties are such that one of them is in a position to dominate the will of the other,

and uses that position to obtain an unfair advantage over the other. A person is deemed to be in that position when he holds a real or apparent authority over the other or stands in a fiduciary relation to the other or where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

Undue influence is often exercised by persons having apparent authority in contracts with Pardanashin women or between parent and children, masters and their pupils, guardians and their wards, legal advisers and clients, medical men and patients.

A Pardanashin woman is one who lives in complete seclusion or who does not appear before strangers. In order to make the agreement binding on such a woman, it is necessary that all the terms and conditions must be explained to and clearly understood by her.

Undue influence makes a contract voidable at the option of the party whose consent has been obtained by undue influence.

### *Illustrations.*

(1) *A* having advanced money to his son, *B* during his minority upon *B*'s coming of age obtains by misuse of parental influence a bond from *B* for a greater amount than the sum due in respect of the advance. *A* employs undue influence.

(2) *A*, being in debt to *B*, the moneylender of his village, contracts a fresh loan on terms which appear to be unreasonable, it lies on *B* to prove that the contract was not induced by undue influence.

(3) *A*, a man enfeebled by disease or age, is induced, by *B*'s influence over him as his medical attendant, to agree to pay *B* an unreasonable sum for his professional services. *B* employs undue influence.

(3) **Fraud.** Fraud means and includes any of the following acts committed by a party to a contract or with his connivance or by his agent with intent to deceive another party, thereto or agent or to induce him to enter into the contract :—

1. The suggestion, as to a fact, of that which is not true by one who does not believe it to be true ;

2. The active concealment of a fact by one having knowledge or belief of the fact ;

3. A promise made without any intention of performing it.

4. Any other act fitted to deceive.

5. Any such act or omission as the law specially declares to be fraudulent.

Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

The effect of fraud in a contract is that it is voidable at the option of the party whose consent is obtained through fraud.

### *Illustrations.*

(1) *A* sells, by auction, to *B* a horse which *A* knows to be unsound. *A* says nothing to *B* about the horse's unsoundness. This is not fraud in *A*.

(2) *B* is *A*'s daughter, and has just come of age. Here the relation between the parties would make it *A*'s duty to tell *B* if the horse is unsound.

(3) *B* says to *A*—"If you do not deny it, I shall assume that the horse is sound". *A* says nothing. Here *A*'s silence is equivalent to speech.

(4) *A* and *B*, being traders, enter upon a contract. *A* has private information of a change in prices which would affect *B*'s willingness to proceed with the contract. *A* is not bound to inform *B*.

**Contracts Uberrimae Fidei.** These are contracts in which it is the duty of one party to disclose to the other all the material facts within his knowledge which are likely to influence the judgment of the other party and where silence is deemed to be equivalent to speech. In such contracts one of the parties is presumed to have means of knowledge which are not accessible to the other. Such contracts are, therefore, liable to be invalidated by non-disclosure of a material fact.

The rule of *Caveat Emptor* does not apply in these cases. Contracts of life, fire and marine insurances and those relating to sale of land and purchase of shares in companies, fall under this head.

**(4) Misrepresentation.** Misrepresentation means and includes :—

(i) The positive assertion in a manner not warranted by the information of the person making it of that which is not true, though he believes it to be true.

(ii) Any breach of duty which without intent to deceive gains an advantage to the person committing it, by misleading another to his prejudice.

(iii) Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.



The effect of misrepresentation is that the contract is voidable at the option of the party whose consent has been obtained by misrepresentation. It should, however, be noted that a party to a contract whose consent is obtained by fraud or misrepresentation may, if he thinks fit, can insist that the contract shall be performed and that he shall be put in the position in which he would have been, if the other party's representation had been true. It should further be noted, that if the consent is obtained by misrepresentation, the contract is not voidable, if the party whose consent was obtained had the means of discovering the truth with ordinary diligence.

### *Illustrations.*

(1) *A*, intending to deceive *B*, falsely represents that five hundred maunds of indigo are made annually at *A*'s factory and thereby induces *B* to buy the factory. The contract is voidable at the option of *B*.

(2) *A*, by a misrepresentation, leads *B* erroneously to believe that five hundred maunds of indigo are made annually at *A*'s factory. *B* examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this *B* buys the factory. The contract is not voidable on account of *A*'s misrepresentation.

(3) *A* fraudulently informs *B* that *A*'s estate is free from encumbrance. *B* thereupon buys the estate. The estate is subject to a mortgage. *B* may either avoid the contract, or may insist on its being carried out, and the mortgage debt redeemed.

(4) *B* having discovered a vein of ore on the estate of *A*, adopts means to conceal, and does conceal, the existence of the ore from *A*. Through *A*'s ignorance *B* is enabled to buy the estate at an under value. The contract is voidable at the option of *A*.

(5) *A* is entitled to succeed to an estate at the death of *B*. *B* dies. *C* having received intelligence of *B*'s death, prevents the intelligence reaching *A*, and thus induces *A* to sell him his interest in the estate. The sale is voidable at the option of *A*.

(5) **Mistake.** Mistake may be one (i) of fact or (ii) of law. Where both the parties to an agreement are under a mistake as to a matter of fact, essential to the agreement, the agreement is void. The mistake as to a law not in force in British India has the same effect as a mistake of fact.

If only one of the parties is labouring under a mistake as to a matter of a fact the contract is not voidable.

### *Illustrations.*

(1) *A* agrees to sell to *B* a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo has been cast away, and the goods lost. Neither party was aware of the fact, the agreement is void.

(2) *A* agrees to buy from *B* a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(3) *A*, being entitled to an estate for the life of *B*, agrees to sell to *C*. *B* was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

(4) *A* and *B* make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation. The contract is not voidable.

## **5. Agreements expressly declared as void :—**

In order to make a valid contract the agreement must not fall under any one of those, which are expressly declared by law to be void. The following are the agreements which are expressly declared to be void by the Indian Contract Act.

(1) **Agreement in restraint of marriage.** Such agreements are discouraged on public grounds as injurious to the moral welfare of the citizens. Every agreement in restraint of the marriage of any person, other than a minor, is void.

(2) **Agreements in restraint of trade.** Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. Agreements in restraint of trade are contrary to public policy, because they have a tendency to promote monopolies, to discourage industry, enterprise and fair competition and to deprive the public of the services and labours of a lawful member.

There are, however, three exceptions to this general rule. These are as follows :—

(i) A person who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer or any other person deriving title to the goodwill from him, carries on a like business therein, provided that such limits appear to the Court reasonable, having regard to the nature of the business.

(ii) Partners may upon or in anticipation of a dissolution of the partnership, agree that some or all of them will not carry on a business similar to that of the partnership within specified local limits.

(iii) Partners may agree that some one or any one of them will not carry on a business other than that of the partnership, during the continuance of the partnership.

(3) **Agreements in restraint of legal proceedings.** Agreements by which one party is restricted absolutely from enforcing his rights under or in

respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, are void to that extent. An agreement in writing by which one or some persons agree to refer to arbitration any disputes arising, is not void.

**(4) Agreements involving uncertainty.** All agreements, the meaning of which is not certain or cannot be made certain, are void.

### *Illustrations.*

(1) *A* agrees to sell to *B* 'a hundred tons of oil'. There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(2) *A* agrees to sell to *B* one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty to make the agreement void here.

**(5) Agreements by way of wager.** All agreements by way of wager are void ; no suit can be brought for recovering anything alleged to be won on any wager or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made. A wager is an agreement between two parties to the effect that if a given event is determined one way, one of them shall pay a sum of money to the other, and in the contrary event, the latter shall pay to the former.

**(6) Agreements to do impossible acts.** An agreement to do an act which is impossible in itself at its very inception, or which becomes impossible at a subsequent date, is void.

**6. Agreements in writing or registered.** The last essential for the validity of a contract is that

it must not contravene any law in force in British India, by which any contract is required to be in writing or in the presence of witnesses or any law relating to documents. All contracts of sale, mortgage, lease and gift of immoveable property, must be in writing and registered.

### **Performance of Contracts.**

The parties to a contract must perform or offer to perform their respective promises, unless such performance is dispensed with or excused under the Contract Act or under any other law, *e.g.*, an insolvent is discharged from paying his debts under the Insolvency Act.

A man's promises are binding on his representatives in case of his death unless a contrary intention appears from the contract. When personal skill and qualifications are involved in the performance of the contract, the contractual relations come to an end by the death of the promisor.

### *Illustrations.*

(1) *A* promises to deliver goods to *B* on a certain day, on payment of Rs. 1,000. *A* dies before that day. *A*'s representatives are bound to deliver the goods to *B* and *B* is bound to pay Rs. 1,000 to *A*'s representatives.

(2) *A* promises to paint a picture for *B* by a certain day at a certain price. *A* dies before the day. The contract cannot be enforced either by *A*'s representatives or by *B*.

**Who may demand performance.** As a general rule, parties to a contract or their representatives or their assigns can demand performance of the contract. The benefit of a contract cannot be assigned to a third party when the contractual

relations are based upon consideration of personal skill and qualifications.

**Valid tender of performance.** Tender is an attempted performance of a promise to do or to pay something by any one party to the other. If such an offer of performance is refused by the other party, the person making the offer is not responsible to the other for non-performance as regards his own rights, nor does he lose his rights under the contract. In order that an offer of performance may be valid it is essential that :—

(1) It must be unconditional. (2) It must be made at a proper time and place and under such circumstances as to give the other party a reasonable opportunity of ascertaining that the person offering to perform' is able and willing to do the whole of that which he has promised. (3) If the offer is to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the same thing as that which the promisor is bound by his promise to deliver.

**By whom contracts must be performed.** The obligation of performing the promise under the contract rests primarily with the promisor, but the promise may be performed by his representatives or any competent person employed by him. But where it is the intention of the parties that the promise should be performed by the promiser himself or where the performance depends on the personal skill of the promisor, it must be performed by him. For example, when

*A* promises to paint a picture for *B*, he must perform the promise personally. Such contracts cannot be assigned to anybody without the consent of the promisee. Where the performance is assigned, both the original promisor and his assignees are liable for non-performance. If the promisee accepts performance from a third person, he cannot afterwards enforce it against the promisor.

If there are several joint promisors, all of them and after the death of any of them, his representatives jointly with the survivors or the representatives of all of them, if they are dead, are bound to perform the promise. In such a case the promisee can compel any one or more of such joint promisors to perform the whole of the promise, but performance by one discharges all. On the other hand, if there are several joint promisees, all of them must jointly enforce it during their life time, and on the death of any one of them, his representatives must join to demand performance with the surviving joint promisees, and if all of them are dead, the representatives of all jointly must demand the performance.

**Time and the place of performance.** Where, by the contract, a promisor is to perform his promise without application by the promisee and no time for performance is specified, the engagement must be performed within a reasonable time. What is reasonable time is a question of fact and necessarily depends on the special circumstance of every particular case. But when a day for performance

is fixed by the contract, the promisor may perform it at any time during the usual hours of business of the day fixed and at the place at which the promise ought to be performed. When a promise is to be performed on a certain day and only on the application by the promisee, it is the duty of the promisee to demand performance at a proper place and time. When a promise is to be performed without application by the promisee and the place is not fixed for the performance, it is the duty of the promisor to apply to the promisee to fix a reasonable place for performance and to perform it at the place so fixed.

### **Termination or discharge of a contract.**

Upon the performance of a contract, the force or effect of the contract is terminated or discharged. The discharge of a contract by its performance may be called the natural way of termination of a contract. The following are the ways of discharging a contract :—

(1) **By fulfilment or performance.** When the respective obligations or promises entered into by the parties to a contract, have been performed, the contract terminates.

(2) **By mutual agreement** between the parties by the same process which created it. This may occur in any one of the following ways :—

- (i) *By substitution* of a new contract in place of the old, whereby the original contract is discharged or rescinded.
- (ii) *By waiver.* When the parties agree to rescind the contract.



- (iii) *By condition subsequent.* A contract may contain provisions which may go to determine it under certain circumstances, such as non-fulfilment of a condition, occurrence of an event etc.

(3) **By impossibility.** When the performance of a contract becomes impossible by the happening of an event over which the promisor had no control, the parties are discharged from the obligation created by the contract.

(4) **By operation of law.** Certain circumstances exonerate the parties from their respective obligations, *e.g.*, when an insolvent is discharged by an insolvency court, the liabilities under the contract are discharged; the loss of a written document will have the same effect.

(5) **By breach.** Any breach or violation or non-performance of the promise by any party discharges or terminates the contract. The party injured by the breach, has not only a right of action but in some cases he is discharged from performing his part of the contract.

### **Breach.**

Discharge by breach may be brought about :—

(1) *By renunciation* before performance is due.

(2) *By impossibility* created by one party before performance is due.

(3) *By renunciation* in the course of performance.

(4) *By impossibility* created by one party in the course of performance.

(5) *By failure of performance.*

**Remedies for breach of contract.** When one of the parties breaks the contract, the other has three remedies. He may seek to obtain (a) damages for loss sustained, (b) the decree for specific performance, or (c) an injunction. In every breach of contract, the injured party is entitled to damages, though they may be nominal. Specific performance or injunction can be granted only when the damages are an inadequate remedy.

**Measure of damages.** The party who sustains a loss by the breach of contract, is entitled to recover from the party breaking it, compensation for any loss or damage caused to him. But compensation for any loss or damage can be recovered only when the loss or damage is such (a) as arises naturally in the usual course of things from such breach. or (b) as the parties knew at the time of the contract to be likely to result from the breach. Compensation will not be granted, if the loss or damage is remote or indirect. In estimating the loss, the means which existed for remedying the inconvenience occasioned by the breach, must be taken into account.

Where no damage arises from the breach of contract, the party claiming compensation is entitled to nominal damages only. A special loss which does not naturally and obviously flow from the breach, cannot be recovered unless expressly stipulated in the contract. It should,

however, be noted that damages are given by way of compensation and not by way of punishment. The party wronged can recover only the actual pecuniary loss sustained by him and not exemplary damages.

### **Liquidated damages and penalty.**

Where the terms of a contract specify the amount to be paid in case of the breach of the contract, or where the contract contains a stipulation by way of penalty, the injured party can recover, *whether or not actual damage or loss is proved to have been caused thereby*, reasonable compensation not exceeding the sum named or the penalty stipulated for. There is, however, one exception to this rule, and it applies to cases of bail bonds, recognizances or other instruments of a like nature, in which persons bind themselves to Government for the performance of various public duties or acts in which the public are interested. In such cases, upon the breach of the condition of any such instrument, the whole amount specified in it is recoverable.

### *Illustrations.*

(1) *A* contracts to sell and deliver 50 maunds of saltpetre to *B*, at a certain price, to be paid on delivery. *A* breaks his promise. *B* is entitled to receive from *A*, by way of compensation, the sum, if any, by which the contract price falls short of the price for which *B* might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(2) *A* contracts to buy of *B*, at a stated price, 50 maunds of rice, no time being fixed for delivery. *A* afterwards informs *B* that he will not accept the rice if tendered to him. *B* is entitled to receive from *A*, by way of compensation, the amount, if any, by which the contract price exceeds that which *B* can obtain for the rice at the time when *A* informs *B* that he will not accept it.

(3) *A* contracts to buy *B*'s ship for 60,000 rupees, but breaks his promise. *A* must pay to *B* by way of compensation, the excess, if any, of the contract price over the price which *B* can obtain for the ship at the time of the breach of promise.

(4) *A* contracts to repair *B*'s house in a certain manner, and receives payment in advance. *A* repairs the house, but not according to contract. *B* is entitled to recover from *A* the cost of making the repairs conform to the contract.

(5) *A* contracts to let his ship to *B* for a year, from the first of January, for a certain price. Freight rises, and on the first of January the hire obtainable for the ship is higher than the contract price. *A* breaks his promise. He must pay to *B*, by way of compensation a sum equal to the difference between the contract price and the price for which *B* could hire a similar ship for a year on and from the first of January.

(6) *A* sells certain merchandise to *B*, warranting it, to be of a particular quality, and *B*, in reliance upon this warranty, sells it to *C* with a similar warranty. The goods prove to be not according to the warranty, and *B* becomes liable to pay *C* a sum of money by way of compensation. *B* is entitled to be reimbursed this sum by *A*.

(7) *A* contracts to pay a sum of money to *B* on a day specified. *A* does not pay the money on that day. *B* in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. *A* is not liable to make good to *B* anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(8) *A* contracts to sell and deliver 500 bales of cotton to *B* on a fixed day. *A* knows nothing of *B*'s mode of conducting his business. *A* breaks his promise, and *B*, having no cotton is obliged to close his mill. *A* is not responsible to *B* for the loss caused to *B* by the closing of the mill.

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## TEST QUESTIONS.

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1. What do you understand by "Offer" and "Acceptance"? When does an offer and acceptance sent by post become complete?

2. Distinguish carefully between void and voidable agreements. What contracts are illegal at Common Law?

3. State fully what you understand by agreements and contracts, giving their essential elements.

4. Define consideration and show its significance in a contract. What is the effect of an agreement without consideration ?

5. What is a sound mind for the purposes of contracting ? Can a lunatic who is at intervals of sound mind contract during those intervals ?

6. Distinguish carefully between fraud and misrepresentation. Give examples to illustrate your answers.

7. What is meant by free consent ? What is the legal effect if the consent of one of the parties is not freely given ?

8. What contracts are known as *Uberrimae Fidei* ? What are their distinctive features ?

9. Agreements in restraint of trade are void. Examine the statement and point out exceptions.

10. In what cases is an agreement said to be illegal or unlawful ? Is an agreement by way of wager unlawful ?

11. When and how far does mistake vitiate a contract ? To what extent does mistake effect consent ?

12. State the provisions of law relating to contracts entered into with a lunatic (a) with the notice of lunacy ; (b) without notice of lunacy.

13. Enumerate the various methods in which contracts may be terminated.

14. How are the liabilities of the parties to a contract affected by the subsequent impossibility ?

15. What is meant by breach of contracts ? How do you measure damages in case of breach ? What are the consequences of breach of contracts ?

16. Explain the legal rule "that the consideration necessary to support a simple contract need not be adequate".

*A* being in want of money sells *B* a picture that is worth Rs. 500 for Rs. 100. Can *A* afterwards set aside the sale on the ground of inadequacy of consideration ?

17. What is meant by Performance, Rescission, Termination and Novation of a contract ?

18. Distinguish between :—

- (a) Void and voidable agreements.
- (b) Undue influence and Coercion.
- (c) Wagering agreements and Teji Mandi transactions.
- (d) Agreement and contract.

19. Write explanatory notes on :—

Reciprocal promises ; Proposal ; Coercion ; Breach of Contracts ; Mistake ; Unlawful Consideration.

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## CHAPTER XV.

### LAW RELATING TO SALE OF GOODS.

The law relating to the sale of goods is contained in the Indian Sale of Goods Act of 1930, which repeals chapter VII of the Indian Contract Act of 1872, and is based mostly on the English model.

**The Contract of Sale.** A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a fixed price.

Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a *Sale*, but when the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an *agreement to sell*. An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled, subject to which the property in the goods is to be transferred.

**Formalities of the contract of sale.** A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed. A contract of sale

may be made in writing or by word of mouth or may be implied from the conduct of the parties. As in an ordinary contract, both the seller and buyer must be persons legally competent to enter into a contract for transferring and acquiring property.

**Subject-matter of contract.** The goods which form the subject of a contract of sale may be either existing goods owned or possessed by the seller, or future goods. The term "goods" means and implies any kind of moveable property other than actionable claims and money, and includes stocks and shares, growing crops, grass and things attached to land which are agreed to be severed before or under the contract of sale. When the goods are identified and agreed upon at the time of contract, they are termed "specific goods", and when they are to be manufactured or acquired by the seller, they are called "future goods".

Where there is a contract for the sale of specific goods, the contract becomes void if the goods, without the knowledge of the seller, have at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract.

When there is an agreement to sell specific goods and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement becomes void.



**The Price.** The price in a contract of sale may be fixed by the contract or it may be left to be fixed in a manner thereby agreed or may be determined by the course of dealing between the parties. The agreement may provide for the price to be fixed by valuation of a third party. Where the price is not determined in accordance with the above provisions, *i.e.*, where there is no agreement as to price, the buyer shall pay a reasonable price. What is reasonable price, is a question which will depend upon the circumstances of each particular case. If the price is to be determined by a third party and such third party does not or cannot determine the price, the agreement becomes void. If the goods or part thereof have already been delivered to and appropriated by the buyer and the price has not been determined, the buyer shall pay a reasonable price for them.

**Caveat emptor.** Broadly speaking, in a sale of goods, it is the duty of the buyer to exercise his own judgment as to the quality of the goods he buys and their fitness for the purpose he has in view, for there is generally no warranty as to quality or fitness, and the maxim *caveat emptor* (let every buyer look for himself) applies. In the absence of any stipulation the buyer cannot complain of the silence of the seller regarding any fact material to the contract.

### **Conditions and Warranties.**

There are, however, exceptions to the general rule of *caveat emptor* explained above and contracts for the sale of goods are frequently governed

by (a) conditions and (b) warranties, which may be express or implied. A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated. A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages, but not a right to reject the goods and treat the contract as repudiated.

Whether a stipulation in a contract of sale is a condition or warranty depends in each case on the construction of the contract. A stipulation may be a condition though called a warranty in the contract,. It is the interpretation which would determine whether in case of breach a buyer has the right to reject the goods and treat the contract as repudiated or whether he has only the right of action for damages.

In case of nonfulfilment of a condition by the seller, the buyer can assume that the seller has repudiated the contract, but he can, if he likes, waive the condition and treat the breach of condition as a breach of warranty. But if the buyer has accepted the goods, or part thereof or when the ownership of the goods has passed to him, he can only treat a breach of condition as a breach of warranty, unless it is part of the contract that he may return or reject the goods.

• **Implied conditions and warranties.** Conditions or warranties are said to be implied when they are not expressed in words but are tacitly understood between the parties to a contract.

In a contract of sale, unless the circumstances show a different intention, there is :—

(a) An implied condition on the part of the seller that, in case of sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods ;

(b) An implied warranty that the buyer shall have and enjoy quiet possession of the goods ;

(c) An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer ;

(d) An implied condition that, in case of sale by description, the goods shall correspond with the description and in case of sale by sample as well as description, they shall correspond to both sample and description ;

(e) An implied condition, that the goods shall be reasonably fit for the purpose for which they are required, if the buyer has expressly or by implication, relied on the seller for the supply of the purpose.

(f) An implied condition, that in case of sale by description and without examination by the buyer, the goods shall be of good merchantable quality (G.M.Q.)

(g) An implied condition, (i) in case of sale by sample, that the bulk shall correspond with the sample in quality, (ii) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, and (iii) that the goods shall be free from any defect which may render them

unmerchantable, which would not be apparent on reasonable examination of the sample.

**Transfer of property or ownership.**

The effect of contract of sale of goods is to transfer the property and title (ownership) from the seller to the buyer. The following are the rules which govern the transfer of property between the buyer and seller :—

(a) When there is a contract of the sale of unascertained goods, the property in the goods is not transferred to the buyer unless and until the goods are ascertained.

(b) When there is an unconditional contract of the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, is postponed.

(c) When there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

(d) When there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh or measure them for the purpose of ascertaining the price, the property does not pass until such goods have been weighed or measured and the buyer has notice thereof.

(e) When there is a contract for the sale of unascertained or future goods by description,

the property in the goods passes to the buyer when the goods of that description are unconditionally appropriated to the contract. When the seller delivers the goods to a carrier for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract. Where goods are sent by rail or shipped abroad and by the R/R or B/L, as the case may be, the goods are deliverable to the order of the seller or his agent, the seller is deemed to have reserved the right of disposal.

(f) When goods are delivered to the buyer "on approval" or "on sale or return" or other similar terms, the property therein passes to the buyer, when he signifies his acceptance, or retains the goods without giving notice within a reasonable time.

**Risk passes with property.** Unless otherwise agreed, the goods remain at the risk of the seller, until the property therein passes to the buyer, but when the property therein is transferred to the buyer, the goods are at the risk of the buyer whether delivery has been made or not.

### **Transfer of title to goods.**

As a general rule, the transfer of title to the goods can only be made either by the owner or by one who has authority of the owner. Where the goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than

what the seller had, unless the owner of the goods is, by his conduct, precluded from denying the seller's authority to sell. There are, however, certain exceptions to this general rule of law, and they are as follows :—

(1) Where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of his business, shall be as valid as if he were expressly authorised by the owner, provided the buyer has acted in good faith and without notice of any defect in the seller's authority.

(2) If one of the several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith.

(3) When the seller of goods has obtained possession thereof under a voidable contract, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

(4) When a person, having sold goods, is in possession of the goods or of the documents of title thereof, he may confer a valid title by again selling them to a person other than the original buyer, provided the second buyer acts in good faith and has no notice of the original sale.

(5) Similarly, when a buyer is in possession of the goods or the documents of title thereto, he or his mercantile agent, may confer a valid

title by sale, pledge etc., to any person receiving the same in good faith and without notice of any lien or other right of the original seller.

### **Performance of the contract of sale.**

It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller should be ready and willing to give possession of the goods to the buyer in exchange for the price; and the buyer should be ready and willing to pay the price in exchange for the goods.

**Delivery.** Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf.

Delivery of part of the goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder. In the absence of any express agreement, the seller is not bound to deliver them until the buyer applies for delivery.

**Rules as to delivery.** In the absence of any agreement, the goods sold are to be delivered at

the place at which they are at the time of the sale ; if not then in existence at the time of sale, they are to be delivered at the place at which they are to be manufactured. Where under a contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, then the seller is bound to send them within a reasonable time.

When the goods at the time of the sale are in the possession of a third person, there is no delivery by the seller to the buyer unless and until such third person acknowledges to the buyer that he holds them on his behalf.

Delivery of goods to a carrier for transmission to the buyer or to a wharfinger for safe custody is *prima facie* deemed to be a delivery to the buyer, whether the carrier is named by the buyer or not. But this will not be so when there is a special agreement to the contrary or when a different intention can be gathered from the dealings of the parties. It is, however, the duty of the seller to enter into a reasonable contract with the carrier or wharfinger in order to protect the interest of the buyer against any loss or damage to the goods while in custody of the carrier or wharfinger. If the seller fails to do so, the buyer may decline to treat the delivery as a delivery to himself and make the seller liable for damages.

When the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods included in the contract and so



delivered, he shall pay for them at the contract rate.

When the seller delivers to the buyer more than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest or he may reject the whole. If he accepts the whole of the goods so delivered, he must pay for them at the contract rate.

When the seller delivers to the buyer the goods, contracted to sell, mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest or may reject the whole. Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

When goods are delivered to the buyer which he has not previously examined, he will not be deemed to have accepted them until he has had reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract. The buyer will be deemed to have accepted the goods when he intimates to the seller that he accepts them, or when he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, retains the goods without intimating to the seller that he has rejected them. When goods are delivered to the buyer and he refuses to accept them, he is not bound to return them to the seller. It is sufficient

if he intimates to the seller that he refuses to accept them.

### **Rights and Remedies of the Buyer.**

As has been already stated above, the buyer is entitled to have delivery of the goods within a reasonable time. Delivery as we have seen before may be actual or constructive. The buyer is also entitled to have any conditions or warranties observed by the seller, whether they are express or implied. Moreover, he is entitled to have delivered to him, at the agreed time and place, the stipulated quantity of goods agreed to be purchased. If the quantity delivered is less than that, the buyer may reject the goods, or accept them and pay for them at the contract rate. If the quantity delivered is larger than he ordered, he may reject the whole or that which is not ordered, or accept the whole and pay at the contract rate. If the goods are mixed up with others, he may accept those ordered and reject the others. Until the buyer has opportunity of examining the goods delivered, he is not deemed to have accepted them.

**Buyer's remedy against breach of contract.** If the seller fails to give delivery of the goods or wrongfully neglects or refuses to deliver, the buyer may sue him for damages for non-delivery. A breach of condition gives the buyer the right to rescind the contract or to sue the seller for damages. When the seller makes a breach of warranty the buyer may deduct the damages from the price or he may sue for damages. He may

also claim interest on the amount of the price in a suit by him for the price paid to the seller.

### **Seller's rights and remedies.**

The seller of goods has two primary rights *viz.*,

- (a) He can compel the buyer to accept the goods ;
- (b) He can compel the buyer to pay for the goods.

Besides these, an unpaid seller has the following additional rights.

(1) **Lien.** A lien is the right to retain possession of any property till the debts on the possessor on account of that property are paid. An unpaid seller, while in possession of the goods, has a right to retain them until their price is paid or tendered, in the following cases :—

- (i) Where the goods have been sold without any stipulation as to credit.
- (ii) Where the goods have been sold on credit and the period of credit has expired,
- (iii) Where the buyer has become insolvent.

An unpaid seller's lien is a particular lien as distinguished from a general lien, as it can only be exercised for the satisfaction of the particular claim, *viz.*, the unpaid price. He can exercise this right of lien, even if he is in possession of the goods as an agent or bailee for the buyer. In case of part delivery of the goods also, he can retain the part undelivered for

enforcing his lien for unpaid price, unless such part delivery has been made under such circumstances as to show an agreement to waive the right of lien.

**When lien is lost.** The unpaid seller of goods loses his right of lien thereon:—

(a) when he delivers the goods to the carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.

(b) when the buyer or his agent lawfully obtains possession of the goods.

(c) when he waives his right of lien.

But the right of lien is not lost, if the buyer unlawfully gets possession of the goods. His right is lost by waiver, when he agrees to a sub-sale by the buyer. His right is also lost when the buyer re-sells the goods by transferring the documents of title to a *bonafide* purchaser for consideration. The unpaid seller's right of lien is not lost even when he obtains a decree for the price of the goods.

**Stoppage in Transit.** When the unpaid seller has parted with the possession of the goods, he may, when the buyer becomes insolvent, exercise the right of stopping the goods while in transit, that is to say, he may resume possession of the goods, so long as they are in the course of transit, and may retain them until payment or tender of the price.

The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods or by giving notice of his claim to a carrier or other bailee, in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case, the notice to be effectual should be given at a time and in such circumstances that the principal by the exercise of reasonable diligence, may communicate it to his servant or agent in time or prevent a delivery to the buyer.

The unpaid seller's right of lien to stoppage in transit is not affected by any sale or other disposition of the goods, which the buyer may have made, unless the seller has assented thereto. But his right is lost, if the buyer being in possession of the documents of title to the goods, transfers them by way of sale to a person who takes them in good faith and for consideration. In case of pledge of these documents by the buyer, the seller can stop the goods in transit only upon satisfying the dues of the pledgee in respect of them. The contract of sale is, however, not rescinded by the mere exercise by an unpaid seller of his rights of lien or stoppage in transit.

**3. Right of resale.** When the goods are of a perishable nature, or where the unpaid seller who has exercised his right of lien or stoppage in transit, gives notice to the buyer of his intention to re-sell, the unpaid seller may, if the buyer does not within a reasonable time pay or tender

the price, resell the goods within a reasonable time, and recover from the original buyer damages for any loss occasioned by his breach of contract ; but the buyer shall not be entitled to any profits which may occur on the re-sale. If such notice is not given, the unpaid seller shall not be entitled to recover such damages and the buyer shall be entitled to the profit, if any, on the re-sale.

Where an unpaid seller who has exercised his right of lien or stoppage in transit re-sells the goods, the buyer acquires a good title thereto as against the original buyer, notwithstanding that no notice of the re-sale has been given to the original buyer.

Where the seller expressly reserves a right of re-sale in case the buyer should make default, and, on the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim which the seller may have for damages.

### **Sale by Auction.**

In the case of sale by auction, where the goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale ; the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner, and until such announcement is made, any bidder may retract his bid, but not afterwards. A right to bid may be reserved expressly by or on behalf of the seller, and where such right is expressly so reserved, the seller or any one person

on his behalf may bid at the auction. But where the sale is not subject to a right of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale. The sale may be notified to be subject to a reserve or upset price. If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

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### TEST QUESTIONS.

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1. What are "ascertained" and "unascertained" goods ? How is a sale of goods effectively made ? What part does "delivery" play in it ?
2. When and how does property pass in a contract for the sale of goods ?
3. Explain and distinguish the following terms :—A sale, and an agreement to sell ; Gift and Barter.
4. What do you understand by "Documents of title to goods". Name such documents and show how they can be transferred ?
5. What are the chief duties of a seller of goods ? Is a seller bound to send the goods to the purchaser ?
6. State briefly the rules regulating the transfer of property in goods as between seller and buyer. What do you understand by "reservation of right of disposal" ?
7. What conditions are implied in a contract for sale of goods by sample ?
8. What is meant by an unpaid seller ? What are his rights in respect of the goods sold by him ?

9. What is "stoppage in transit"? What are the rights of a seller with regard to goods in transit?

10. What is a lien? Can it be exercised when the time for payment is fixed at a future date?

11. What is the liability of a common carrier for loss or damage or injury to goods. (a) in transit; (b) remaining in his custody after arrival at their destination?

12. What do you understand by a "document of title"? What part does it play in mercantile transactions?

13. Distinguish between a condition and warranty in a contract of sale of goods. What remedies are open to a purchaser on breach of a condition and warranty?

14. When does the property in goods pass to the buyer in the case of a delivery of goods "on sale or return"?

15. Explain the maximum:—'Caveat Emptor' and its application to a sale of goods? What are the exceptions to it? State how far it is recognised by the Indian Contract Act?

16. *X* agrees to sell to *Y* 200 quarters of wheat. Explain the various courses which are open to *Y* if *X* delivers less or more than the 200 quarters agreed?

17. Under what circumstances can a seller of goods give a better title to the buyer than he himself possesses?

*A*, in good faith buys a horse from *B*, which *B* has stolen from *C*. Can *C* recover the horse?

18. "Railway companies entrusted with carriage of goods from one place to another are considered to be bailees with certain liabilities" Discuss this proposition briefly?



## CHAPTER XVI.

### NEGOTIABLE INSTRUMENTS.

The law relating to Negotiable Instruments in India is contained in the Indian Negotiable Instruments Acts, 1881. The act mainly defines the law relating to Promissory Notes, Bills of Exchange, and Cheques and applies to the whole of British India. It does not, however, affect any local usage relating to any instrument in an oriental language, *e.g.* a Hundi.

The term 'Negotiable Instrument', in general, applies to a document which by mere delivery or by endorsement and delivery passes a full title to the benefit of the instrument to the transferee who takes it *bonafide* and for value, irrespective of any defects that there may be in the title of the transferor and on which the holder is able to sue in his own name. Thus the essential features of a Negotiable Instrument are :—

(1) That the property in it *i.e.*, complete right of ownership passes merely by delivery or by endorsement and delivery.

(2) That the holder in due course is not in any way affected by any defect in the title of the previous holder.

(3) That the holder in due course can sue upon it in his own name.

(4) That the holder in due course is not affected by certain defences that could be set up

against previous holders, *e.g.* fraud, want of consideration etc.

An instrument may be made negotiable by mercantile custom or by Statute. The law as to bills of exchange and other negotiable instruments forms a branch of the general body of the Law Merchant and is comparatively of recent origin. The origin of these instruments can be traced to the usage and custom of merchants and traders, which courts of law have adopted as settled law. The Indian Negotiable Act presumably deals with only three kinds of instruments, *viz.*, Promissory Notes, Bills of Exchange and Cheques but, as we have seen above, it does not exclude the existence of other kinds of such documents by virtue of local custom or under other enactments. A Hundi, for example, is treated as a negotiable instrument by local usage among Indian businessmen, and the dishonour of a Hundi is extremely rare.

Besides the bills of exchange, promissory notes and cheques, there are other instruments, such as Treasury Bonds, Dividend Warrants, Debentures payable to bearer, Share Warrants to bearer, Dock Warrants, Delivery Orders, which are recognised as negotiable instruments by mercantile law. On the other hand, Postal Orders, Share Certificates, Share Transfers and I O U's are not negotiable. Documents of title to goods have some of the characteristics of a negotiable instrument for purposes of assignment, but they are not negotiable instruments in the real sense. For example, a bill of lading is assigned by

endorsement and the assignee can sue upon it, but it is not a negotiable instrument because the transferee cannot acquire a better title to it than that of the transferor.

### Definitions.

**A Bill of Exchange** is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument.

**A Promissory Note** is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only, to or to the order of a certain person or to the bearer of the instrument.

It should be borne in mind that mere acknowledgment of debt does not constitute a promissory note unless there is an express promise to pay.

**A Cheque** is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

In all the above three kinds of negotiable instruments the order or the promise, as the case may be, is an unconditional one, *i.e.*, the payment of money should not be made to depend upon a contingency. The date of payment, however remote, must be certain. Besides, the amount mentioned must be certain and incapable of variation, as certainty is one of the essential requisites of a negotiable instrument. Moreover,

a bill, note or cheque should be expressed to be payable in money and money only. The sum is certain although it includes future interest, or is payable at an indicated rate of exchange, or is payable by instalments with a provision that, on default the whole shall become payable. One other requisite common to these instruments is that the person, to whom the money is ordered or promised to be paid, must be certain or at least must be indicated with reasonable certainty though misnamed or misdescribed. A negotiable instrument can be made payable to two or more payees jointly or it may be made payable to one of two or one or some of several payees.

**Parties.** For a regular bill of exchange three parties are essential, *viz.*, the drawer, the drawee and the payee. The party drawing the bill is called the *drawer* and the party to whom the order is addressed is called the *drawee*, and the party to whom the money is ordered to be paid is called the *payee*. Only two parties are necessary in the case of a promissory note. The person who makes the instrument is called the *maker* and the party to whom the promise is made is called the *payee*. When the drawee to whom the bill is addressed signs on the instrument in significance of his assent to the order made, his signing is called the *acceptance* and he is then called the *acceptor*. No acceptance is needed in the case of a promissory note, and it may be said generally that the maker of a promissory note and the acceptor of a bill of exchange stand on the same footing as regards their rights and duties. Cheques have many

points of similarity with bills of exchange but they are dissimilar in some respects. The drawee of a cheque must always be a banker and the instrument must not be payable otherwise than on demand. Like promissory notes, cheques do not require acceptance but only prompt payment.

Every person capable of entering into a contract may become a party to a negotiable instrument and is bound in the same way as in other contracts. A negotiable instrument is not, however, invalid simply because one or more of the parties is incapable of contracting, by reason of minority or of unsoundness of mind, or other disabilities imposed by law. An agent duly authorised may make, accept or endorse a bill, note or cheque in the name of his principal and thus bind the latter; but the authority must however, be made clear and the agency must be disclosed on the face of the instrument. If the agent signs in his own name he will be personally liable. Corporations and companies enter into contracts through their authorised agents, and their capacity to incur liability on negotiable instruments depends upon their constitution and the nature of their business. Persons signing for and on behalf of limited companies must indicate that they are signing as such and add their designation to the signature, *e.g.* "For the British India Corporation, Ltd., R. Menzies, Director."

**Consideration.** Negotiable instruments are presumed to stand on the basis of valuable consideration. A negotiable instrument made, drawn, accepted or endorsed or transferred without

consideration or for want of a consideration which fails, creates no obligation between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to the holder for consideration, such holder and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto. The law requires that the consideration must be lawful, otherwise the bill cannot be enforced between the immediate parties. The same will be the case with regard to remote parties unless the holder is a *bona fide* holder in due course. In the case of an accommodation bill the party accommodated cannot recover the amount paid by him from one who accommodated him. It is the usual practice to insert the words "value received" or a similar statement of consideration in bills of exchange and promissory notes, but this is not legally necessary.

**Acceptance.** The acceptance of a bill as we have seen is the signification of the drawee of his assent to the order of the drawer completed by delivery. The acceptance is invalid unless the following conditions are complied with :—

(i) It must be written on the bill and signed by the drawee. The mere signature of the drawee without any additional words is sufficient to constitute acceptance.

(ii) It must not express that the drawee will fulfil his promise by any other means than the payment of money.

A bill may be accepted (*a*) before it has been signed by the drawer or while otherwise incomplete, (*b*) when it is overdue, or after it has been dishonoured by previous refusal to accept or by non-payment.

An acceptance may be either general or qualified. A *general acceptance* is one which assents without qualification to the order of the drawer. A *qualified acceptance* is one which in express terms modifies the effect of the bill as originally drawn, by the addition of some conditions as to payment. The various classes of conditional acceptance have been fully explained in Modern Business Practice Part I and need not be repeated here.

**Negotiation.** One important characteristic feature of a negotiable instrument is that the debt due under it may be assigned over to a third party by what is called "negotiation". An instrument is said to be negotiated when it is transferred to a third person so as to constitute him the holder thereof. In other words, negotiation of an instrument is putting it into circulation. Such negotiation may be effected into two ways. If a promissory note, bill of exchange or cheque is payable to bearer, it is negotiated by delivery thereof; but if it is payable to order, negotiation can take place only by endorsement and delivery by the holder. By negotiation, any person taking the instrument *bona fide* and for value, acquires a good title to it whatever might have been the defects in the title of the transferor. It is this feature, coupled with its transferability

by delivery, like cash, which determines the negotiability of an instrument. Negotiable instruments resemble coins of the realm which pass from hand to hand without being tainted by the title of the transferor.

**Endorsement.** All instruments except, those which are payable to bearer, require endorsement by the payee for purposes of negotiation. A negotiable instrument contains either a promise or an order to pay a certain sum to a certain person or to his order or to the bearer. It is this provision for alternative payment that makes the instrument really negotiable. There may be a series of parties to the instrument, each party making the money payable to the succeeding one or to his order. Endorsing is the signing of the payee's name on the back of a negotiable instrument, and the endorsement is completed by delivery of the instrument. The person who endorses a negotiable instrument is called an *endorser* and the person in whose favour it is endorsed is called the *endorsee*. It may sometimes happen that an instrument is by rapid circulation covered up with endoresments. Under such circumstances a piece of paper called an *allonge* is tacked on to the instrument for further endorsements to be made on it.

**Effect of Endorsement.** The effect of an endorsement followed by delivery is to transfer to the endorsee not only the property in the instrument but also the right of further negotiating the instrument to other persons. The



transferor by endorsing the instrument warrants to the immediate transferee and to any subsequent holder that, when he endorsed the document, he had a good title to it, that it was genuine in all particulars and that any endorsements on it previous to his own, were also genuine.

It is, however, quite open to the endorser to restrict further negotiation or to exclude such right, or merely to constitute the endorsee an agent for some other person.

**Kinds of Endorsement.** Endorsements of negotiable instruments may be divided into the following classes :—

1. **Blank or General Endorsement.** It is one where the endorser simply signs his name on an instrument without specifying any endorsee to whom he wants to transfer his rights in the instrument. This makes the instrument payable to bearer and the property therein is transferred by mere delivery.

2. **Special Endorsement.** A *special endorsement* or *endorsement in full* is one where the payee writes the name of the person in whose favour he endorses, above his own signature. If the endorser writes the words “or order” after the name of the endorsee, the document becomes payable to the order of the endorsee and it will require a further endorsement. Where an instrument has been endorsed in blank, any holder may convert the blank endorsement into a special endorsement, by writing above his signature a direction to pay

the amount of the instrument to the order of himself or some one else.

**3. Restrictive Endorsement.** A restrictive endorsement is one which prohibits further negotiation of an instrument or which expresses that it is a mere authority to deal with the instrument as directed by the indorser, and not a transfer of the ownership *e.g.* (i) "Pay Mr. Ram Lal only"; (ii) "Pay Mr. Ram Lal for collection"; (iii) "Pay Mr. Ram Lal for the account of X".

**4. Partial Endorsement.** A partial endorsement is one which purports to transfer to the endorsee a part only of the amount payable or which purports to transfer an instrument to two or more endorsees separately. Such an endorsement does not operate as a negotiation of the instrument, as the law requires that an endorsement to be valid, must be of the entire instrument.

**5. Conditional Endorsement.** A conditional endorsement is one which makes the transfer of property in an instrument from the endorser to the endorsee dependent on the fulfilment of a stated condition. Such a condition may be disregarded by the paying banker in the case of a cheque.

**6. Sans Recourse Endorsement.** A sans recourse (without recourse to me) endorsement is one, where the endorser makes it clear that the endorsee or any subsequent holder should not look to him for payment, in case the instrument is dishonoured.

**7. Facultative Endorsement.** A Facultative Endorsement is one where the drawer or any of the endorsers waives some of the holder's duties towards him, and adds to that effect to his signature, while endorsing the instrument, *e.g.* "Notice of dishonour waived".

An endorsement must always be made by the holder of the instrument. Every sole maker, drawer, payee or endorsee, and if there are more than one, all of them may endorse and negotiate the instrument. To do so, he or they must be holder or holders in lawful possession of the instrument. This means that no stranger, or a person not a holder, can endorse so as to convey title. A person may endorse as an agent of the holder, but in doing so he must take care to denote that he signs as an agent and does not intend to incur personal liability. In case of *per pro signatures* the person signing claims his authority under a power of attorney. The power of attorney may give very wide or very limited powers. Before accepting a *per pro signature* on any important documents care should, therefore, be taken to inspect the power of attorney, to see whether the signature on such a document comes within the authority of the person who signs. In the case of a partnership any of the partners may draw, accept or endorse an instrument in the name of the firm in the ordinary course of business of the firm. The directors or other officers of a Joint Stock Company may draw, accept and endorse a negotiable instrument in the regular course of the business of the company, but they must

make it clear, to avoid personal liability, that they are signing the document in the name of the company.

A minor may draw, indorse, deliver and negotiate a bill, note or cheque so as to bind all parties except himself. He cannot, however, accept a bill, nor can he make a note.

A bill of exchange or a promissory note is negotiable *ad infinitum* until payment of satisfaction thereof by the maker, drawer or acceptor at or after maturity, but not afterwards.

**Forged Endorsement.** The title of a person who negotiates a negotiable instrument is said to be defective when he obtains the instrument or acceptance thereof by fraud, duress, force or other unlawful means or for an illegal consideration. An acceptor of a bill of exchange already endorsed is not released from liability by reason that such endorsement is forged, if he knew or had reason to believe the instrument to be forged when he accepted it. Where a cheque bears a forged or unauthorised endorsement, and the banker pays it in good faith and in the ordinary course of business, he is relieved from liability. This rule is based on the principle that the paying banker is not in a position to know whether the endorsements on the cheques are authentic. The only duty imposed upon him is, that he should see that the endorsements on the cheques are correct in form. But this does not apply where the signature of the drawer is forged, since the banker is bound to know the signature of his customer. If he pays under a forged signature of the drawer

of a cheque, he cannot debit the account of the customer with the payment.

**The Holder.** The holder of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon, from the parties thereto. Where a note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction. The mere fact that an instrument is in the possession of a person, does not make him the "holder". What is essential to constitute a person a holder of a negotiable instrument is, that he is entitled to the possession thereof in his own right, though he may not be in possession of the instrument. Another condition necessary to constitute a 'holder', is that he must be entitled in his own name to receive or recover the amount. The term 'holder' will not include a person, who though in possession of the instrument has not the right to recover the amount due thereon from the parties thereto, *e.g.*, the finder of a lost instrument payable to bearer, or a thief in possession of such an instrument, or even the payee himself, if he is prohibited by an order of the Court from receiving the amount due on the instrument. No person can sue on a negotiable instrument unless he is named therein as the payee or unless he becomes entitled to it as endorsee or bearer. A mere holder may however be infected with notice of some defect, in the title of the instrument, of the person who negotiated to him, and for that reason be unable to enforce payment.

**Holder in Due Course.** Opposed to a bare holder is a 'holder in due course'. A holder in due course means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque, if payable to bearer, or the payee or endorsee thereof, if payable to order, before the amount mentioned in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. The phrase 'holder in due course' shortens considerably the cumbrous old English equivalent "*bona fide* holder for value without notice" and both the English and the Indian Acts have now adopted this phrase.

It will appear from the above that a holder in due course of a negotiable instrument is a holder who has taken it complete and regular on the face of it, under the following conditions, *viz.*, that he became the holder of it before it had been previously dishonoured, if such was the fact, that he took the instrument in good faith and for value and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it. It is necessary that the holder to be a holder in due course, must have acquired the bill, note or cheque for consideration. Such consideration must be valuable consideration sufficient to support a simple contract. The *donee* of a negotiable instrument, for example is not a holder in due course, as he is not a holder for value. He succeeds to the rights of his transferor and,

if the *donor* be a holder in due course, the donee *ipso facto* acquires all the rights of a holder in due course. The donee, however, cannot sue the donor on the instrument, but he can sue all the prior parties. He can negotiate the instrument to a third person who, if he is a holder in due course, can sue the donee.

A holder in due course should be distinguished from a mere holder for value. A holder for value is a person who holds a bill for which value has at any time been given, though not by the holder himself. Thus if in order to pay off a debt due, the debtor induces a third party to draw a bill on himself, which he accepts in favour of the creditor, the latter can become a holder for value and can sue the drawer, though he has not received any value. A holder who has not himself given value cannot sue his transferor on the bill, although he can of course sue all prior parties.

When a negotiable instrument has been lost or has been obtained from any maker, acceptor or holder thereof, by means of an offence or fraud, or for an unlawful consideration, no possessor or endorsee who found or obtained the instrument is entitled to receive the amount due thereon, from such maker, acceptor, or holder or from any party prior to such holder, unless such possessor or endorsee is, or some person, through whom he claims, was a holder thereof in due course. It would be clear from the above, that a thief or a finder of a lost instrument gets no title to it and the owner of the instrument can on tracing it in the hands of the thief or finder, take it away

from such a person. But if the instrument happens to be payable to bearer or endorsed in blank by the rightful holder and the thief or finder transfers the same to an innocent holder in due course for a valuable consideration, the said holder would get a good title and would be protected. If, on the other hand, the instrument happens to be payable to order and the thief or the finder forgets it and then transfers it to some one for valuable consideration, the transferee will not be in a position to enforce payment from the parties to the instrument. This rule is based on the principle that "forgery gives no title".

### **Maturity of a bill or note.**

The maturity of a bill or note is the date on which the payment falls due. In the case of a bill which is not expressed to be payable "on demand", "at sight" or "on presentation" the date of maturity is the third day after the date on which it is expressed to be payable. In calculating the date of maturity of a bill or note, three days known as the "days of grace" must, therefore, be added to the date on which the instrument is made payable. If the bill or note is payable in instalments, days of grace can be claimed on each instalment. When a bill is payable after so many days or months after sight, the due date is calculated not from the date of issue but from the date on which it is accepted.

### **Liabilities of parties.**

The drawer of a bill of exchange contracts that on due presentment the bill shall be accepted



and paid according to its tenor, and that in case of dishonour, he will compensate the holder or any endorser, who is compelled to pay on it as a result of dishonour. Until the bill is accepted, the drawer is the party who is primarily liable on it. But when it is accepted by the drawee his liability becomes secondary. Being the author of the instrument, the drawer will not be allowed to deny its validity as originally made or drawn.

The drawee of a cheque having sufficient funds to the credit of the drawer properly applicable to the payment of such cheque, must honour the cheque when duly required to do so, and in default of such payment, he must compensate the drawer for any loss or damage caused by such default.

The liabilities of the maker of a note and the acceptor of a bill are in most cases alike. Both of them are bound to pay the amount of the instrument at maturity according to the apparent tenor of the note or of the acceptance respectively. They are bound to compensate any party to the instrument for the loss or damage caused to him by default in payment. The maker of a note is estopped from denying the validity of the instrument as originally made, and cannot in a suit by the holder in due course plead the incapacity of the payee to endorse the instrument. The acceptor of a bill too cannot deny the payee's capacity, nor can he deny the authority of the drawer to draw or endorse the bill. He cannot have any defence against the holder in due course,

except in case of forgery. Absence of consideration is no defence against the holder in due course.

The liability of the endorser is much the same as that of the drawer of a bill. By endorsing a bill or note he engages to compensate every subsequent holder in case of dishonour by the drawee, maker or acceptor, for any loss or damage caused to him provided he receives due notice of dishonour. He is precluded from denying to a holder in due course the genuineness or regularity of any endorsement or of the signature of the drawer. He has, however, a right of recovery against the previous endorsers or against the drawer or the acceptor of the bill.

Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors; and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as principal debtor in respect of each subsequent party.

### *Illustrations*

*A* draws a bill payable to his own order on *B*, who accepts. *A* afterwards endorses the bill to *C*, *C* to *D*, and *D* to *E*. As between *E* and *B*, *B* is the principal debtor and *A*, *C*, and *D* are his sureties. As between *E* and *A*, *A* is the principal debtor and *C* and *D* are his sureties. As between *E* and *C*, *C* is the principal debtor and *D* is his surety.

If a bill or note is dishonoured at maturity, the holder must give a notice of dishonour within a reasonable time to every party, except where the drawer or any of the endorsers has waived his right of receiving such notice. Failure to give notice of dishonour in due course will relieve all parties, except the acceptor of the bill and the maker of the note, from their respective liabilities.

When the holder of a negotiable instrument without the consent of the endorser, destroys or impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity. For example, if *A* is the holder of a bill of exchange, made payable to the order of *B*, which contains the endorsements in blank of *B*, *C*, *D* and *E*; and if *A* strikes out the endorsements of *C* and *D* without the consent of *E*, he is not entitled to recover anything from *E*.

When the acceptor of a bill or the maker of a note becomes the holder of it at or after maturity in his own right, *i.e.*, when in course of negotiation it is negotiated back to him. By such *circuity of action* the liabilities of all the parties are cancelled, and all rights of action are extinguished.

### **Dishonour of Instruments.**

A bill is said to be dishonoured when the drawee refuses to accept it when duly presented, or when it has been accepted, the acceptor fails to pay it on the due date. When the drawee is

incompetent to contract or the acceptance is qualified the bill may be treated as dishonoured.

A promissory note is dishonoured when its maker fails to make payment on the due date. Similarly a cheque is said to be dishonoured when the drawee banker refuses to pay the amount on presentation during business hours. In cases where presentment for acceptance is excused and the bill remains unaccepted, it may be treated as dishonoured by non-acceptance.

Notice of dishonour must be given at the earliest opportunity to the drawer and the prior endorsers, who are liable thereon or their authorised agents or their legal representatives, if they are dead, or their assigns, if they are declared insolvent. Failure to give such notice will discharge all the endorsers from liability. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives such notice.

**Notice of dishonour when unnecessary.** Notice of dishonour is unnecessary :—

(a) when the party who is entitled to notice waives his right to get it *e.g.*, when the instrument contains the following statement “Notice of dishonour waived.”; (b) in order to charge the drawer when he has countermanded payment; (c) when the party charged does not suffer any damage *e.g.*, where the drawer having a balance of Rs. 1,000/- only at his bank draws a cheque for Rs. 1,600 and it is dishonoured, he is not

entitled to any notice; (d) when the party to whom notice is to be given cannot be found after the due search; (e) when the party bound to give notice is, for any reason unable without any fault of his own to give it; (f) to charge the drawers when the acceptor is also a drawer; (g) in case of a promissory note which is not negotiable; (h) when the party entitled to the notice, promises unconditionally after knowing the facts to pay the amount due in the instrument.

### Noting and Protest.

When a bill or note is dishonoured it is the duty of the holder to get the fact of dishonour noted by a notary public and take a certificate from him known as "Protest", so that when a question arises as to whether it was dishonoured or not, such certificate may serve as a *prima facie* evidence of dishonour.

**Noting.** Besides giving notice of dishonour to prior parties the holder is entitled to cause such dishonour by non-acceptance or non-payment to be noted by a notary public upon the instrument or on a paper attached thereto, within a reasonable time after dishonour. Such notice must specify the date of dishonour, the reason, if any, assigned for such dishonour, or if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

The object of noting a bill or note is to have an official record of the refusal to comply with the demand made by the notary either for

acceptance or payment. Noting is, however, not compulsory in the case of inland instruments.

**Protest.** A protest is the next step after noting. When a dishonoured bill or note has been noted, the holder may within a reasonable time, cause such dishonour to be certified by a notary public. Such certificate is called *Protest*.

**Protest for better security.** When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time cause a notary public to demand better security of the acceptor and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

**Contents of Protest.** A protest must contain :—

(a) either the instrument itself, or a literal transcript of the instrument and of every thing written or printed thereupon ;

(b) the name of the person for whom and against whom the instrument has been protested ;

(c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public ; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found ;

(d) when the note or bill has been dishonoured, the place and time of dishonour, and, when better

security has been refused, the place and time of refusal ;

(e) the subscription of the notary public making the protest ;

(f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

Foreign bills must be protested for dishonour when such protest is required by the law of the place where they are drawn. A protest signed by the notary public is the legal evidence of the presenting of a bill and in most foreign countries it is looked upon as the only proof of dishonour. Nothing alone is sufficient in the case of inland bills.

### **Acceptance and payment for honour.**

When a bill of exchange has been noted or protested for non-acceptance or for better security, any person, not being a party liable thereon, may with the consent of the holder, by writing on the bill, accept the same *supra protest* for the honour of the drawer. Such a person is called an *acceptor for honour*.

The object of such an acceptance is to save the credit of all or some of parties to the instrument, to prevent legal proceedings being taken against them, on dishonour by the drawee, and to exempt them from damages.

The acceptor for honour must, by writing in the bill under his hand, declare that he accepts under protest the protested bill for the honour of the drawer, or of a particular endorser. He must specify the name of the party for whose honour he accepts the bill. When the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer. Such an acceptance must be made with the consent of the holder. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill, if it is not paid by the drawee ; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss, damage sustained by him in consequence of such acceptance. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment and has been dishonoured by him, and noted or protested for such dishonour.

**Payment for honour.** When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same. The payer for honour must previously declare before a notary public the party for whose honour he pays and such declaration must be recorded by the notary public. The payer for honour may be any person whether he is a stranger or one already liable on the bill. No consent of the holder is necessary in cases of payment for honour.



The person paying for honour is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party, for whose honour he pays, all sums so paid, with interest thereon and with all expenses properly incurred in making such payment. Where a drawee in case of need is named in a bill of exchange, or in any endorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

A drawee in case of need may accept and pay the bill of exchange without previous protest.

### **Presentment for payment.**

A promissory note or bill of exchange made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment of such presentment has the same effect as non-payment of a note at maturity.

A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

A promissory note or bill of exchange, made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

**When presentment unnecessary.** No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases :—

(a) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or,

if the instrument being payable at some other specified place, neither he nor any person authorised to pay it attends at such place during the usual business hours, or,

if the instrument not being payable at any specified place, he cannot after due search be found ;

(b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment ;

(c) as against any party if, after maturity, with knowledge that the instrument has not been presented.—

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part ;

or otherwise waives his right to take advantage of any default in presentment for payment ;

(d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

### **Discharge.**

The discharge of one or more of the parties to a negotiable instrument, must be distinguished from the discharge of the instrument itself. By the discharge of a negotiable instrument is meant the cessation of its negotiability and the extinguishment of all rights thereunder. The maker, acceptor or endorser of a negotiable instrument is discharged from liability thereon by any of the following :—

(i) payment in due course, (ii) cancellation, (iii) release, (iv) circuitry of action, and (v) material alteration.

1. **Payment.** Payment in due course means payment made at or after maturity of a negotiable instrument to the holder thereof in good faith and without notice that his title to the same is defective. If the payment made at maturity is of the

exact amount due on the instrument and is made to the holder thereof, it would discharge every party to the instrument from his liability. If the instrument is payable to bearer or has been endorsed in blank, all parties thereto are discharged from liability, if the payment is made in due course, according to its apparent tenor. If it is payable to a specified person or to his order, it must be paid to the holder in due course. The payment should be in legal tender money, and it should be made to the holder or his duly authorised agent. The amount due on a bill must include interest, if any, at the specified rate expressly agreed upon, calculated from the date of the bill until tender or realisation. The person liable to pay the amount is entitled for his own satisfaction and security, to have the instrument shown to him before payment, and on payment, to have it delivered up to him.

2. **Cancellation.** If the holder of a negotiable instrument cancels the name of the acceptor or endorser with the intention of discharging him, the liability of such acceptor or endorser to the holder or any party claiming under him, will be discharged. The discharge of the acceptor or endorser in such a case will have the effect of discharging the liabilities of other parties, who had a right of recourse against the party so discharged. For example, a bill is drawn by *A* on *B*, payable to the order of *C*. *B* accepts it before payment; *C* endorses it to *D* and then *D* endorses it to *E*. Until payment is made at maturity the liabilities of all the parties to *E* remain intact.

But if *E* strikes out the name of *B*, the acceptor, then *B* is discharged from liability, and along with him the liability of *D* is also discharged as he loses his right of recourse by such cancellation.

It should be noted that, when a party is discharged by cancellation, there must be a deliberate intention on the part of the party cancelling. If the cancellation is done by mistake, it cannot operate as a discharge. Cancelling of negotiable instruments is generally effected by cancelling the signature by drawing a line across it or by writing the word, "cancelled" on the instrument. The cancellation of the signature of the drawer will discharge all endorsers.

**3. Release.** The holder of a negotiable instrument may by his own acts, other than cancellation, release or discharge its maker or acceptor or endorser from liability. Where the holder accepts satisfaction in any form other than cash, such a substitution of a new contract or an alteration of an old one, will be a release as far as the old instrument is concerned. Where the holder of an instrument allows it to remain with the drawee for more than 24 hours without the consent of the previous parties, they are released by such conduct of the holder.

**Circuity of action.** When the acceptor becomes the holder of a bill in his own right at or after maturity, the bill is discharged by circuity of action. This is based on the principle that a principal debtor cannot at one and the same time be the creditor.

**Material alteration.**

Any material alteration of a negotiable instrument by the holder, renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties. Such alteration, if made by an endorsee, discharges his endorser from all liability to him in respect of the consideration thereof.

A material alteration consists of :—(i) the alteration of date, made with a view to reduce or increase the period ; (ii) the alteration of the sum payable ; (iii) the alteration of the period for which the document is drawn ; (iv) the addition of a new party ; (v) the alteration of the rate of interest and (vi) the alteration of the place of payment. An alteration made by a stranger will have the same effect as if made by the party himself.

Alterations involving (i) conversion from order into bearer or bearer into order by the rightful party, (ii) the alteration to correct a mistake, (iii) the addition of the words “on demand” in an instrument, where no time of payment is mentioned, (iv) the addition of the words “with interest” in a note, where the rate was already specified, and (v) the addition of an attesting witness to a signature by a party ; are not material alterations under the Negotiable Instruments Act, 1881, and will not vitiate the instrument. It should, however, be noted that an alteration made only

by accident, will not be a ground to avoid the instrument.

The following alterations are, however, permitted by the Negotiable Instrument Act :—

(i) Crossing of cheques generally, if not already crossed; specially, if already crossed generally.

(ii) Converting a blank endorsement into a special endorsement.

(iii) Filling in of blanks in case of inchoate instruments.

(iv) Addition of the words “ Not Negotiable ” within the crossing.

(v) The crossing of a cheque a second time by a banker to another banker for collection.

Where a bill of exchange, cheque or promissory note has been materially altered, but does not appear to have been so altered, payment thereof by a person or banker liable to pay, and paying the same in good faith according to the apparent tenor thereof and without negligence, shall discharge such person or banker from all liability thereon.

### **Compensation.**

The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque by any party liable to the holder includes the amount due upon the instrument with interest at 6% p. a. together with the expenses properly incurred in presenting, noting and protesting it.

When the person charged resides at a place different from that at which the instrument is payable, the holder is entitled to receive such sum at the current rate of exchange between the two places. The party entitled to compensate may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him together with all the expenses, properly incurred by him. If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

### **Miscellaneous.**

**Inland and foreign instruments.** A promissory note, bill of exchange or cheque drawn or made in British India and made payable in, or drawn upon any person resident in British India, is deemed to be an inland instrument. Any such instrument not so drawn, made or made payable, is deemed to be a foreign instrument.

**Ambiguous Instruments.** When an instrument is so made out that it may be construed either as a promissory note or bill of exchange, the holder may elect to treat it as either, and the instrument shall thenceforward be treated accordingly. This will happen when the drawer and the drawee are the same person or where the drawer is a fictitious person or has no capacity to contract or accept the bill. Once the holder has exercised his choice, he is bound by it.

**Inchoate Instruments.** When a person signs and delivers to another a stamped paper, in



accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing is liable upon such instrument in the capacity in which he signs the same, to any holder in due course for such amount. No person, other than a holder in due course, can recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder. The document must be filled in before it can be enforced. Not only the original holder but even a subsequent holder can fill up the amount. A mere holder for safe custody cannot do so.

**Accommodation Bills.** These are bills of exchange which are drawn, accepted or endorsed and put into circulation with the object of enabling one or more of the parties concerned to raise money by getting them discounted. These bills differ from trade bills in that they are not drawn for any valuable consideration and, until value has been given (*i.e.* if the bills are discounted), the parties are not liable thereon. As soon as value has been given for an accommodation bill, a holder in due course has a right of action against any of the parties, and it makes no difference if he is aware that the instrument is an accommodation bill. Such bills may be drawn for the

accommodation of either the drawer or the acceptor or both and the discount charges are borne by the party recovering the proceeds of the bill.

**Discounting a Bill.** One of the greatest facilities afforded by a bill of exchange is that it enables the holder to sell the debt and obtain cash at once, instead of waiting for payment till the due date of the bill. As a matter of fact, very few bills are retained by the holders until maturity. Generally banks and bill brokers, who give cash, credit the account of the endorsers, and in exchange deduct a small amount by way of interest for the period up to the due date of the bill. The amount so deducted is called *discount* and the operation is known as *discounting* the bill. To discount a bill is to obtain money for it, before it becomes due. A person obtaining money before the due date from his banker is said to be discounting the bill with his banker, whilst the banker, advancing money on the bill, is said to be discounting the bill for his customer. The rate of discount varies generally with the prevailing rate of interest against first class security as well as the credit of the parties to the bill that is to be discounted.

**Retiring a Bill.** A bill is said to be retired, when it is paid before the due date of its maturity. The acceptor of a bill may prefer to pay it before the due date, with the object of gaining rebate *i.e.* the interest on the amount for the unexpired period of the instrument. This is known as retiring a bill under rebate or discount.

**Renewing a Bill.** It sometimes happens that when the acceptor of a bill is not able to meet it at the due date, he requests the drawer to give him time and draw a fresh bill in place of the old one. If the holder is satisfied as to the solvency of the acceptor, he will comply with the request on the condition that the acceptor pays interest for the extended period as well as the cost of stamp for the new bill. This process is known as the renewal of a bill.

**Lost Bill.** If the bill is lost before it is overdue, the person, who was holder of it, may apply to the drawer to issue another bill of the same tenor and date, giving security to the drawer, indemnifying him against all the parties in case the bill, alleged to have been lost, should again be found. The drawer can be legally compelled to issue a duplicate.

**Bank Drafts.** A bank draft is a bill of exchange drawn by one bank upon another. Such drafts are frequently drawn by a head office on its branches and *vice versa*. They are payable on demand and are used for purposes of both inland and foreign remittances. A person wishing to send money to another town may obtain a draft payable on demand to or to the order of a specified person, on paying a commission which is usually at the rate of four annas for every hundred rupees or part thereof. In the case of foreign drafts the amount payable in the foreign country is charged for by the bank issuing the draft at the current rate of exchange between the countries concerned.

**Telegraphic Transfers.** This is another means of remitting money to a foreign country. If the remitter wants to send money by the quickest possible method, he may send it by means of a Telegraphic Transfer, through a bank instead of obtaining a bank draft. The bank will charge the equivalent amount together with its commission and charges and send a cable, directing its branch or another bank in the foreign country to pay the amount in accordance with the instructions of the remitter.

*Note :—For detailed study of Cheques, Promissory Notes and Hundis, the reader is advised to refer to Modern Business Practice Part I.*

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## TEST QUESTIONS.

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1. Define a Negotiable Instrument and state what are its special characteristics.
2. Give standard forms for a (i) Cheque, (ii) Promissory note, (iii) Bill of exchange. What do you understand by “discounting” of a B/E and state what determines the rate of discount?
3. What are the advantages of a B/E to a (i) debtor and (ii) a creditor? What advantages does a B/E possess over other methods of payment?
4. Distinguish between a bill of exchange and a cheque; and a promissory note and a bill of exchange.
5. Distinguish (i) “holder” from “holder in due course”. What are the advantages and consequences of a remark at the back of a cheque, “not negotiable”?

6. What is the effect of endorsement? Give examples of endorsements in the following cases:—(a) A payee whose name has been mis-spelt by the drawer of a cheque, (b) a widow, (c) an illiterate person, (d) a firm and (e) a joint stock company.

7. What is meant by negotiation? What is the legal effect of forgery of an endorser's signature? What is the effect of delivery of a negotiable instrument through post?

8. What is the difference between a forged endorsement and a forged signature on a cheque? Explain fully if a banker is liable in case payment of such cheque is made.

9. *P* draws a cheque on his banker. The amount of cheque is increased by *Q* without *P*'s authority, and the banker paid in good faith, the increased amount to *Q*. When is the banker entitled to charge the increased amount and when original amount?

10. How far does the alteration of a B/E affect the rights of (a) existing parties to the bill, (b) subsequent endorsers?

Would your answer be the same if the alteration was not apparent on an ordinary inspection?

11. State the conditions of a valid acceptance for honour and mention the rights and liabilities of an acceptor for honour.

12. "A negotiable instrument is one, the property in which passes by delivery from hand to hand" comment.

13. Explain and illustrate:—

(a) "A holder of a negotiable instrument who derives his titles from a holder in due course has the right thereon of that holder in due course."

(b) "Where a cheque payable to order purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course."

14. What are the respective liabilities of the drawer, acceptor and endorsers of a B/E, when the bill is accepted (a) for value, (b) for the accommodation of the drawee?

15. What is a documentary bill and what functions does it serve in international trade ? What is meant by the following operations in regard to a Bill of Exchange :—

(a) Accepting ; (b) Discounting ; (c) Retiring ; (d) Dishonouring and (e) Renewing ?

16. When is a cheque said to be crossed (a) generally, (b) specially ? Who may cross it ? What is the effect of writing “not negotiable” across it ?

17. Enumerate the circumstances under which notice of dishonour is unnecessary ? Explain what is meant by “Marking of cheques ?”

18. Write explanatory notes on :—

(a) Facultative endorsement ; (b) Payment in due course ; (c) Days of grace ; (d) Inchoate instruments ; (e) Noting and protesting ; (f) Presumptions in Negotiable Instruments.

19. What do you understand by noting and protesting of a bill ? When is protest necessary ? What particulars should a Protest contain ?

20. *A* is the payee and holder of a negotiable instrument. Excluding personal liability by an endorsement “without recourse” he transfers the instrument to *B*, and *B* endorses it to *C*, who endorses it to *A*. What are the rights of *A* against *B* and *C*.

21. Distinguish between :—

(i) Endorsement in blank and special endorsement ; (ii) General and qualified acceptance ; (iii) Inland and foreign bills ; (iv) Cheque and Promissory note.

22. Can a holder of a bill of exchange make alterations in the bill ? What would be the effect of material alterations ? Give some examples of alterations which you would consider as material ?

23. What do you understand by “holder in due course” of a B/E ? *X* is a holder in due course of a bill drawn

payable to the order of a fictitious person. *X* presents the bill to the acceptor on maturity. Is the latter bound to honour it ?

24. Can a creditor be compelled to take a negotiable instrument in discharge of a debt ?

*A* owes *B* Rs. 1,000 and offers to pay him in cash. *B* states that he will prefer a B/E, and *A* therefore hands him his acceptance for the amount. What is the position of the parties, if the bill is subsequently dishonoured ?

25. State the conditions under which presentment of a bill or note for payment is unnecessary under the Negotiable Instrument Act.

Will presentation for payment be excused (a) if *X* tells the holder that he will not pay, (b) if *X* is made bankrupt ?

26. What is meant by the discharge of a negotiable instrument ? Describe the operations which discharge an instrument and extinguish all rights and liabilities thereunder.

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## APPENDIX I.

### BUSINESS TERMS.

*(Terms already explained in the text and in Modern Business Practice Part I, are omitted).*

**Ad Valorem.** This term means according to the value, and not to the weight or quantity and is used in connection with the imposition of duties.

**Advise Fate.** Where early notice as to the payment or non-payment of a cheque is desired, the cheque is sent direct to the banker upon whom it is drawn with the request to "advise fate".

**Agenda.** A list of business to be done. This is a heading generally used by public companies when calling a Board meeting or a meeting of their shareholders.

**Amortization.** The process whereby bonds and shares are redeemed by means of annual drawings from a sinking fund.

**Arbitrage.** The word is applied to the purchase of securities on foreign exchange in one centre for immediate sale in another centre, where a higher price rules, in order to take the benefit of the difference.

**Backwardation.** It implies the rate of interest charged for carrying forward a bear transaction in a stock-exchange. It is used when securities are bought cheaper for the "account" than for money.

**Bailment.** A bailment is the delivery of goods by one person to another for some purpose,



upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

**Balance of Trade.** The term is used to denote the difference between the total value of exports and imports of a country.

**Banking a market.** Openly offering securities at decreasing prices with a view to lowering the prices.

**Bank Rate.** It is the standard rate at which the Reserve Bank of India is prepared to buy or discount bills of exchange or other commercial papers eligible for purchase under the Reserve Bank of Act.

**Bear.** A speculator who sells stocks and shares in the expectation of being able to buy the same at a lower price before the delivery date arrives, and to make a profit on the transaction.

**Bi-metallism.** It denotes the free and unlimited coinage of both gold and silver as the basis of the monetary system of a country.

**Bonded Warehouse.** A licensed house where goods liable to duty may be warehoused without payment of the duty until they are removed or cleared.

**Bonus.** An *extra* dividend sometimes given to shareholders in Public Companies when the profits made are far above the usual average.

**Boom.** A period of abnormal activity with stocks and shares at high prices. The opposite is "slump".

**Bottomry Bond.** It is a bond which is executed by the owner or captain of a ship for borrowing money on the security of the ship.

**Bull.** A speculator who contracts to buy stocks or shares in the expectation of being able to sell them at a higher price, before the next settlement.

**Call money.** Money lent by bankers and others to bill brokers at an agreed rate of interest for re-payment at a moment's notice.

**Capitalization** is the act of converting into capital.

**Carat.** A measure used by assayers and goldsmiths to denote the fineness of gold. There are 24 carats in any mass of gold.

**Cash credit.** An agreement made by a banker permitting persons to draw upon him, in sums as they may from day to day require, upto a certain fixed amount upon a security and bond being deposited with him.

**Cheap Money.** Money is said to be cheap when loans can be obtained at a low rate of interest in the money market.

**Collateral security.** It is the secondary or indirect security which may be available to the lender when the debtors make any default.

**Contango.** The charge made for carrying over a 'bull' transaction to the next settlement.

**Contingent Liability.** A liability which will only come into existence when some event happens or fails to happen.

**Contraband.** Prohibited or dutiable goods smuggled into the country.

**Co-partnership.** A profit sharing scheme in which the employees are not only entitled to a share in the profits, but also to a voice in the management of the concern.

**Copy right.** The sole right to produce or reproduce a work which belongs to the author or his assigns. Copy right is created by Statute.

**Cover.** Deposits of money or marketable securities with a lender as security for a loan or against a possible liability on an operation.

**Dear money.** Money is said to be dear when the floating supply of money is scarce and advances cannot be obtained even on good security, except at a high rate of interest.

**Death duties.** Duties levied by the State upon the estate of deceased persons.

**Deed of Assignment.** A deed by which an insolvent debtor gives up the whole of his property for the benefit of his creditors.

**Delivery Order.** A document entitling any person named therein or the legal holder to the delivery of any goods, lying in any dock or warehouse.

**Demonetize.** The removal of coins officially from circulation as legal tender.

- Dividend warrant.** An order or authority by means of which persons entitled to payment of dividend on their holdings of stock and shares receive payment.
- Drawback.** A sum paid by the government upon certain classes of goods exported, on which duty has already been paid.
- Earmarked.** Money or securities reserved for a special purpose.
- Embezzlement.** Misappropriation of employer's money by an employee.
- Exchange Pegging.** When the normal fluctuations of the foreign exchange rates between two countries are prevented from taking place, the exchange is said to be "pegged".
- Embargo.** An order by which goods or ships are forbidden to enter or leave a port.
- Fiduciary Loan.** It is a loan granted without security upon the confidence of the honour of the borrower.
- Founder's Shares.** These are shares granted to the founders of a company in consideration of their having *float*ed the concern.
- Free Trade.** Unrestricted trade with other countries; trade not burdened with excessive prohibitions or high and restrictive duties.
- Gilt-edged securiries.** First rate securities considered to be absolutely safe *e.g.* Govt. Paper.
- Guaranteed Stock.** Securities upon which the interest is guaranteed by the government or by another company.

**Holding out.** Representation made by a person that he is a partner in a particular firm. When he so holds himself out, he will be liable as a partner to any person who acted on the basis of such representation.

**Hedging.** A foreign exchange and commodity market term for an operation whereby loss is limited by buying or selling forward against a spot sale or purchase.

**Interim Dividend.** A dividend declared before the expiration of the full financial period, either on account of current profits or out of accumulated profits.

**Jettison.** The deliberate throwing overboard of cargo or of a ship's tackle to lighten the ship, when it is in danger.

**Mandate.** A contract under which one person employs another to manage any business for him.

**Manifest.** A detailed account of a ship's cargo, sent by her owners abroad or brokers at the port of shipment to their agents.

**Margin.** A Stock Exchange and banking term for the difference between the amount of a loan and the total value of securities which must be kept up by the borrower in the event of any depreciation in the value of the securities.

**Monometallism.** This term is given to a money currency based on a single standard.

**Moratorium.** An extension of time allowed under exceptional circumstances by the

Government of a country for the payment of all just and lawful debts, specially with regard to Negotiable Instruments.

**Money market.** This is a general term for all transactions relating to money, such as the dealings of bill-brokers, capitalists, bankers, and bullion dealers, in the foreign exchanges etc., by which the current value of money is gauged and regulated.

**Monopoly.** An exclusive right possessed by a person or body of persons to carrying on some branch of trade or manufacture.

**Notary Public.** An official having authority to certify deeds etc., and to note the dishonour of bills of exchange.

**One Man Company.** A company which, to all intents and purposes, is owned and controlled by one man.

**Options.** A mode of speculating on the Stock Exchange where a person pays down so much per cent or so much per share for the option to buy or sell so much stock or so many shares at a fixed price on a certain day.

**Overtrading.** Trading beyond one's available  
✓ means actually at command.

**Primage.** It is the payment of an additional percentage over the freight towards the cost of loading or unloading.

**Probate.** An official copy of the will of a deceased person, issued by the Registry of the High Court after the original will has been proved.

**Quorum.** The minimum number of members who must, according to the rules of the particular body, be present at a meeting in order to *conduct* the business in regular form.

**Rate of Exchange.** The current value of the currency, of one country *expressed* in terms of the currency of another.

**Ring.** A combination of capitalists or manufacturers formed for the object of controlling prices or output.

**Salvage.** Property saved from the sea or a fire. Refers also to the reward to a person who saves goods at the high seas.

**Signatories.** Those who sign as subscribers to the Memorandum of Association of a joint-stock company.

**Sliding Scale.** An arrangement whereby the workman's wages vary in proportion to the selling price of the product.

**Script.** It is the provisional certificate of a person's share in a Joint Stock Company or Government Loan.

**Trustee.** One who holds property in trust for the benefit of another.

**Window Dressing.** It is the manipulation or arrangement of the Balance Sheet of a company whereby its cash balances are shown in a favourable position.

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## FOREIGN WORDS AND PHRASES OFTEN USED IN BUSINESS.

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<b>Ad infinitum</b>	.. to infinity.
<b>Ad initio</b>	.. from the beginning.
<b>Ad interim</b>	.. in the meanwhile.
<b>Ad valorem</b>	.. according to the value.
<b>Bona fide</b>	.. in good faith.
<b>Causa proxima</b>	.. proximate cause.
<b>Caveat emptor</b>	.. let the buyer beware.
<b>De facto</b>	.. actually.
<b>Esprit de corps</b>	.. the animating spirit of a collective body.
<b>Ex-officio</b>	.. in virtue of (his) office.
<b>Ex post facto</b>	.. retrospective.
<b>Facsimile</b>	.. exact copy.
<b>Gratis</b>	.. free.
<b>In extenso</b>	.. in full length.
<b>In loco</b>	.. in the proper place.
<b>In petto</b>	.. in reserve.
<b>In status quo</b>	.. in the former state.
<b>Inter alia</b>	.. among other things.
<b>Inter se</b>	.. among themselves.
<b>In transitu</b>	.. in course of transit.
<b>Ipso facto</b>	.. by that very fact.
<b>Intra vires</b>	.. within the powers.
<b>Laissez faire</b>	.. let alone, applied to a particular economic-political policy.
<b>Lex non scripta</b>	.. unwritten law ; common law.



<b>Lex scripta</b>	.. statute law.
<b>Nemine dissentiente</b>	.. no one dissenting ; without a dissenting voice.
<b>Nota Bene (N.B.)</b>	.. note well
<b>Par excellence</b>	.. by way of eminence
<b>Par example</b>	.. for example.
<b>Pari passu</b>	.. side by side ; on the same footing.
<b>Pro tanto</b>	.. for so much ; as far as it goes.
<b>Prima Facie</b>	.. at first sight.
<b>Pro forma</b>	.. as a matter of form.
<b>Pro rata</b>	✓ in proportion to rate.
<b>Quid pro quo</b>	.. something in return.
<b>Sine die</b>	.. without a day being appointed.
<b>Sine qua non</b>	.. an indispensable condition.
<b>Uberrimae fidei</b>	.. in the utmost good faith.
<b>Ultra vires</b>	.. beyond the powers or rights conferred by law.
<b>Verbatim et literatim</b>	.. word for word and letter for letter.
<b>Via</b>	.. by way of
<b>Vice versa</b>	.. the terms of the case being inter changed or reversed.
<b>Vide</b>	.. see.

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## APPENDIX II.

### EXAMINATION PAPERS.

#### INTERMEDIATE BOARD, U. P.

#### INTERMEDIATE EXAMINATION IN COMMERCE.

1930

#### BUSINESS METHODS AND ELEMENTARY ECONOMICS


#### FIRST PAPER

1 Clearly distinguish between 'General Average,' and 'Particular Average'. Illustrate your answer with examples. What do you understand by the 'Memorandum clause' in a marine policy?

2 Ram Mohan of Amraoti exports cotton to Brown & Co. of Manchester. Give, in brief, the procedure he will follow in exporting the goods, and enumerate the principal documents that will be used in the course of the transaction.

3 What is a 'firm offer'? *A* offers certain books to *B* to be purchased within a week. After 3 days he sells them to *C* for a better price without waiting for *B*'s acceptance. Meanwhile *B* accepts the offer which *A* receives on the 4th day. Can *B* sue *A* for damages? Discuss it critically.

4 *A* draws a cheque in favour of *B* who endorses it in blank and sends his agent *C* to pay it into his (*B*'s) account at the bank. *C* writes above *B*'s endorsement "Pay to *C* or order" and himself endorses it to *D*, who pays *C* the face value of the cheque, endorses it, and sends it to his bank where it is collected and credited to his account. *C* absconds with the money. Can *B* recover the amount of the cheque from *D*? Would it make any difference if the cheque has been crossed and marked "not negotiable"?

5 Messrs. A Dalal & Sons of Madras send 24 chests of indigo marked  per S.S. *Asia* to Mr. Richard

Jones of London to be sold on behalf, account, and risk of the consignors **who pay the freight in advance**. Prepare an Accounts Sales with the details given below :—

Date : November 20, 1929 ; net weight 5682 lbs ; sold for 8s. 3d. per lb. ; dock charges £ 6. 10s. ; marine insurance £ 2. 1s. and other expenses £ 3. 5s.

6. Ram Prasad of Delhi has purchased books worth Rs. 500 10a. 6p. from Macmillan & Co., Calcutta. He is allowed a month's credit. Draw up a Bill of Exchange to settle the payment, supplying the necessary details of date, etc., from your own side.

---

## 1931

### BUSINESS METHODS AND CORRESPONDENCE

#### FIRST PAPER

NOTE—Attempt *any three* questions from Section A.

#### SECTION A.

1. Can a minor be admitted as a partner in a firm ? Discuss the position of a minor partner (1) during his minority, and (2) after he attains his majority.

2. Define a bill of lading. What functions does it fulfil ? Describe the characteristics of a negotiable instrument in such a way as to make it clear how—if at all—a bill of lading falls short of being one.

3. Write short notes on *any five* of the following :—

Insurable interest.

Average policy.

F.G.A.

Causa proxima.

Subrogation.

f. o. b.

c. i. f.

“Lost or not lost ” clause in a marine insurance policy.

4. What do you mean by a qualified acceptance ? Give illustrations. How does such an acceptance affect the rights of the holder as against (a) the acceptor, and (b) the drawer and endorsers of the bill ?

## SECTION B.

1. Apply to the following advertisement appearing in *The Leader* :—

Wanted an Accounts Clerk, under 30, for a Glass Manufacturing Company in the United Provinces, competent to take charge of accounts and assist in correspondence work, if need be. State experience, age, and salary required. Apply to Box No. 2459C. "Leader" Office, Allahabad.

1932

## BUSINESS METHODS AND CORRESPONDENCE

## FIRST PAPER

N.B.—Candidates are required to answer Question No. 1 and *any four* of the others.

1. Haji Nur Elahi & Sons, Delhi, placed an order for 1,500 pieces porcelain ware with the Eastern Export Agency, Ltd., London, the payment for the goods to be made by a 60 days sight D/A bill. The goods were shipped to Bombay per S.S. *Himalaya* on the 6th February, 1932 and the shipping documents were forwarded to Delhi through the National Bank of India, Ltd. The particulars of the shipment are as follows :—

Three cases marked

H.N.E.S. Bombay
--------------------

each containing 500

pieces porcelain ware, total £ 438 less discount at  $1\frac{1}{2}\%$ . Packing 7s. 6d. each case ; Carriage to port 2s. 6d. ; Dock charges 3s. per case ; Freight at £ 3-10-0 per ton of 40 cubic ft. plus 10%, each case measuring 6'-6"×4'-6"×3'-6" ; Marine insurance on £ 450 at 4s. 3d. per cent. All these expenses were paid by shippers.

You are required : (a) to prepare an invoice of the shipment ; (b) to give the documentary bill as drawn by the exporters ; and (c) to state the procedure the importers must follow (after the receipt of advice from London) in order to get the goods to Delhi.

2. What are the 'days of grace' ? If a bill of exchange reaches maturity on a holiday, when is it payable ?

What is meant by a specially crossed cheque ? Can a specially crossed cheque be crossed again, and, if so, subject to what conditions ?

3. Distinguish between void agreements and voidable contracts, giving examples of each.

4. What steps will you take to get house property insured against fire ? What is the effect of an average clause in a fire policy ?

5. Compare prices current, price lists, quotations, and firm offers.

6. Explain the distinction between general average and particular average, and indicate the circumstances in which each becomes applicable.

7. If you intended to commence business in the retail trade on your own account, what inquiries would you make before coming to a final decision ? Discuss the question from the point of view of situation, premises, etc. and specify at the commencement of your answer the type of business you have in mind.

8. Write short explanatory notes on the following : Risk Note ; Letter of Hypothecation ; Commission Agent ; Bonded Warehouse.

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1933

## BUSINESS METHODS AND CORRESPONDENCE

### FIRST PAPER

N.B.—Candidates are required to answer Question No. 1 and *any four* of the others.

1. On 5th January, 1933, Moolchand Ratanchand, of Delhi, consigned per ss. *Rajputana* 500 bags of oilseeds (each bag containing two cwts.) to the Eastern Trading Co., Ltd., London.

The consignees took delivery of the goods on the 10th February, and in a week's time sold them as follows:— 24 tons @ £ 9-15 per ton and the remainder at £ 10-1-6 per ton. The London disbursements in connection with consignment were: Fire insurance £ 1-5-0 ; Rent £ 2-10-0 ; Sundry expenses £ 10-5-6. The consignees are entitled to a commission of  $12\frac{1}{2}\%$ .

On 20th February, an A/S. was rendered and the net proceeds were remitted by a bank draft.

You are required (a) to prepare the A/S. in proper form ; (b) to make out the bank draft ; (c) to calculate the amount of the draft in rupees at  $1/5 \frac{3}{4}$ .

2. Distinguish between (a) earnest money and part payment, (b) general and particular lien, and (c) actual and constructive delivery.

3. What are the respective liabilities of the drawer, acceptor, and endorsers of a bill of exchange, when the bill is accepted (a) for value, and (b) for the accommodation of the drawer ?

4. An Agra merchant desires to import some sewing machines from Germany. State the procedure he must follow in order to secure these goods.

5. How should the cheques payable to the following persons be endorsed: (a) The Manager of Modern High School ; (b) Mrs. Ghosh ; (c) Kamta Prasad & Sons ; (d) The Ideal Leather Works, Limited ; (e) An illiterate ?

Write short explanatory notes on *any four* of the following:—

Certificate of Origin ; Double Insurance ; F. O. R., Destination ; D/P Bill ; Cypher Telegram ; Clearance Sale.

7. A merchant has insured goods worth Rs. 1,000 for Rs. 800 under a marine policy. What amount of compensation can he recover in the event of (a) total loss; (b) loss of half the goods?

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### 1934

## BUSINESS METHODS AND CORRESPONDENCE

### FIRST PAPER

N.B.—Candidates are required to answer Question No. 1 and *any four* of the others.

1. On 10th February 1934, Douglas Fraser & Sons., Ltd., London, shipped the following goods per ss. 'Demos' to Bombay by order of Bansidhar Ramgopal, General Merchants, Delhi :—

Ten cases marked

B.R.

each containing 500 pieces

of Artificial Silk Trimmings (Sample No. 87345), each piece of yards, at  $1\frac{1}{4}d.$  per yard less  $12\frac{1}{2}\%$ . The charges in connexion with the shipment were: Packing  $7s. 6d.$  per case; Carriage to port  $12s.$ ; Dock Charges  $17s. 6d.$ ; B/L., etc.,  $5s.$ ; Freight at  $20s.$  per ton of 40 cubic feet plus  $10\%$  the measurements of each case being  $60" \times 42" \times 45"$ ; Insurance on £ 250 at  $5s.$  per cent; Commission at  $5\%$ .

A thirty d/s. D/A bill is drawn in duplicate for the amount of the invoice, and the shipping documents are sent to Delhi through the Eastern Bank, Limited.

You are required (a) to make out the invoice of the goods, (b) to draft the second copy of the bill, and (c) to calculate in pence the price per yard c.i.f. Bombay.

2. In what circumstances will a bank refuse to pay a cheque drawn upon it by a customer?

3. What are the functions of a wholesaler? What services does he render (a) to the manufacturer, and (b) to the retailer?

4. What system would you recommend a firm to adopt for the purpose of obtaining the necessary information and keeping the necessary records of the amount of credit each customer should be allowed ?

5. Describe, noticing the relevant commercial documents, the importation of a dutiable commodity which passes through a bonded warehouse in the process.

6. What are documents of title to goods ? Name and explain three documents of title and show how they may be transferred.

7. Give a brief explanation of the following terms : Holder in Due Course ; Not Negotiable Crossing ; Insurable Interest ; W.P.A.

8. *A* contracts to buy certain goods from *B* and refuses to take delivery. *B* resells the goods. If the resale results in a loss, can *B* recover the balance from *A* ? Give reasons.

---

1935

## BUSINESS METHODS AND CORRESPONDENCE

### FIRST PAPER

N.B.—Attempt *five* questions only. Question No. 7 is compulsory.

1. Give briefly the meaning of the following :—  
(a) I O U ; (b) C/P ; and (c) L/C.

2. How would you open and operate a Post Office Savings Bank Account ? Discuss the above in the light of the rules which prevail.

3. Explain : (a) card-indexing, and give its advantages ; and (b) Rotary Multiplier.

4. You are in charge of the Correspondence Department of a big business house run on modern lines. Your office handles a thousand letters per day. Show briefly how you would run your department.



5. What are the essentials to a valid contract ? Give a few instances of contracts which have all the essentials and yet they are void.

6. Explain : (a) Marked cheques ; (b) Average clause and (c) Garnishee order.

7. Give the types of business houses engaged in the export trade of India, and point out briefly the defects in each.

---

### 1936

## BUSINESS METHODS AND CORRESPONDENCE

### FIRST PAPER.

N.B.—Attempt *five* questions only. Question 2 is compulsory.

1. Discuss the various types of *Hundies*, and show how they differ from a Bill of Exchange.

2. You have imported dutiable goods from Japan of the value of fifty thousand rupees. The amount of duty to be paid is twenty thousand rupees. You have not enough cash to honour the draft and to pay the duty. Clearly explain how you would complete the transaction and take delivery of the goods.

3. (a) You have decided to assure your life for ten thousand rupees. Trace the various steps you would take to obtain the Policy.

(b) Explain what is meant by insurable interest.

4. What points should be taken into consideration in establishing a new business, and why ?

5. Clearly distinguish between a partnership and a joint stock company.

6. Give briefly the meaning of the following :—

(a) F. A. S., (b) B/L, (c) Postal Order, (d) Salvage, (e) C. I. F.

7. Describe the principal duplicating appliances generally in use in offices.

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1937

## BUSINESS METHODS AND CORRESPONDENCE

## FIRST PAPER.

N.B.—Attempt *five* questions only. Question 2 is compulsory.

1. Anant Ram of Ahmedabad exports 60 bales of cotton to a firm in Manchester. Describe briefly the procedure he will have to follow in exporting the goods, and enumerate the principal documents that will be used in the course of of the transaction.

2. On 10th January, 1937, Messrs. Atkinson & Co., Manchester, shipped the following goods per s.s. 'City of Lucknow' to Bombay to the order of Messrs. Baijnath Gangadhar, cloth merchants, Cawnpore :—

Five cases marked

B.G.

each containing 75 pieces

of shirtings @ 10s. per piece of 40 yards. The charges in connection with the shipment are : packing 10s. per case ; carriage to port 12s. ; shipping charges 5s. ; freight 25s. per ton of 40 cub. ft. and 10% primage ; postage and bill stamps 3s. 6d. ; Bill of Lading 2s. 6d. ; Insurance on £ 250 at 10s. per cent ; Commission £ 5. The measurements of the cases were 4'0" × 2'9" × 3'0".

Make out the invoice in proper form and calculate the price in pence per yard c.i.f. Bombay.

3. Sketch in a broad outline how you would organize the filing arrangements for both inward and outward correspondence in a large business house.

4. (a) Enumerate the various services which bankers render to the mercantile community.

(b) Describe the advantages of a bill of exchange to (i) Debtors, and (ii) Creditors.

5. Explain clearly the meaning of the following and abbreviations :—

Cypher Telegram ; Subrogation ; Holder in due course ; F. P. A. ; Not Negotiable Crossing ; D. L. O.

6. (a) 'Insurance is a contract of indemnity'.

Explain the meaning of this statement. Is it true of all classes of insurance?

(b) Explain the difference between 'General Average' and 'Particular Average' and indicate the circumstances in which each is applicable.

7. Explain the particular features and privileges of a Private Limited Company as compared with a Public Limited Company. State the advantages of a private limited company over a partnership.

8. (a) What are the advantages of the V. P. P. system to business men?

(b) Mention the minimum postage for letters addressed to people in (i) Great Britain, (ii) U. S. A., (iii) Japan, and (iv) Australia. What additional postage would be needed if these letters were sent by air mail?

9. What are the functions of the wholesale and Retail dealers?

What services does the wholesale dealer render (i) to the manufacturer, and (ii) to the retailer?

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1938

## BUSINESS METHODS AND CORRESPONDENCE

### FIRST PAPER.

N.B.—Attempt *five* questions only, of which question 2 is compulsory.

1. Explain the distinctive features and the relative advantages of a Partnership and a Joint Stock Company.

2. Prepare an Account Sales for 100 bales of Cotton from Patel & Co., Bombay, per s.s. *Arabia* sold in Liverpool. by Sydney, Webb & Co., @ 4½d. per lb. Gross Weight 384 cwt., Tare and draft 14 cwt. The expenses incurred are: freight ½d. per lb. on gross weight. Fire insurance on

£ 850 @  $1\frac{1}{2}\%$ . Dock dues £ 8. 15s. Selling expenses £ 2: 5s. 6d. Commission @  $2\frac{1}{2}\%$ .

How will the net proceeds be remitted to the consignors and what would be the amount realized by them in rupees at the exchange rate of 1s. 6d.?

3. Describe the working of a rotary duplicator, and give its advantages and disadvantages.

4. Explain the following :—

(i) Actual Total Loss and Constructive Total Loss.

(ii) A Bill of Exchange and a *Hundi*.

(iii) A Bank Draft and a Postal Order.

5. What do you understand by 'Insurable Interest' in connection with marine and fire insurance? Must this insurable interest exist at the time the loss or damage occurs? What is the effect of an 'average' clause in a fire policy?

6. What is the difference between a Coded Telegram and a Cipher telegram? Illustrate your answer by means of examples.

7. Under what circumstances will a bank refuse to pay a cheque drawn upon it by a customer?

8. Can a holder of a Bill of Exchange make alterations in the Bill? What would be the effect of material alterations? Give some examples of alterations which you would consider material.

9. Ram Mohan & Co., of Bombay, export a consignment of cotton to Edward & Co., Liverpool. Give the procedure of exportation, and enumerate the documents used in the transaction.

1939

## BUSINESS METHODS & CORRESPONDENCE

### FIRST PAPER.

N.B.—Attempt *five* questions only, of which Question 1 is compulsory.

1. On 15th January, 1939, Messrs. Allen Brothers & Co., of Manchester, shipped the following goods per S.S. *Light of Asia* to the order of Messrs. Himmatram Kripashanker of Bombay :—

Ten Cases marked



Bombay, each containing

50 pieces of grey shirtings @ 12s. per piece of 40 yards. The charges in connection with the shipment are : packing 5s. per case ; carriage to port 12s. 6d. ; shipping charges 10s. ; Bills of Lading, etc. 3s. 6d. Each case measures 4' 6" × 3' 8" × 3' 4" and freight is charged at the rate of 22s. per ton of 40 cubic feet and 10% primage. Insurance is to be effected on £ 350 at 5s. per cent.

A thirty days D/A bill is drawn in triplicate for the amount of the invoice and the shipping documents are sent to Bombay through the National Bank of India, Ltd., Bombay.

You are required (a) to make out the invoice for the goods, and (b) to draft the first copy of the bill.

2. Five persons trading in partnership wish to convert their business into a limited liability company. Explain clearly in each case the necessary steps they will have to take : (a) when they do not wish to take any outsiders into the business, and (b) when they wish to invite the public to subscribe to the share capital of the proposed company.

What is meant by 'limited liability', and how can the public know that a concern is a limited company ?

3. Explain clearly the difference between the following :—

- (i) A Shareholder and a Debenture holder.
- (ii) A Whole Life Policy and an Endowment Policy.
- (iii) A Letter of Credit and a Letter of Hypothecation.

4. The Bharat Engineering Co., of Cawnpore, have imported some machinery from a firm in England. Explain the procedure that will have to be followed by the importing firm to take delivery of the consignment.

5. (a) Discuss the clauses that are usually included in a partnership agreement.

(b) Explain the procedure for registration of a firm under the Partnership Act, 1932. What is the effect of such registration ?

6. Describe the form of a Card Index, and name the important uses to which a card index can be put. Explain its advantages over other kinds of index.

7. (a) Describe briefly the characteristics of a Negotiable Instrument. What are the respective liabilities of (i) the acceptor, (ii) the drawer, and (iii) the endorser, of a bill of exchange ?

(b) What are documents of title to goods ? Name and explain briefly three such documents of title, and show how they can be transferred.

8. (a) How is the contract of marine insurance effected on 'Lloyds' ?

(b) Name and explain briefly the different kinds of policies that are generally issued by Fire Insurance offices.

9. Clearly bring out the features of Wholesale trade as distinguished from Retail trade, and describe the services rendered by the wholesaler to the manufacturer and to the retailer.

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1940

## BUSINESS METHODS AND CORRESPONDENCE

### FIRST PAPER.

N.B.—Attempt *five* questions only, of which Question 1 is compulsory.

1. On 10th January, 1940, Peter White & Sons of Madras, consigned 50 Barrels of Coffee per S.S. *Malwa* to

James Wilson & Co., London, to be sold on their account and risk. The following are the details regarding the shipment and the sale of the consignment :—

Gross weight 96 cwt. 2 qr. 8 lb. ; Tare, 9 cwt. 2 qr. 12 lb. ; Draft, 2 cwt. 1 qr. 8 lb. ; Sold at 68/- per cwt.

Charges : Entry, Dock and Town dues, 13/- ; Marine Insurance on £350 @ 10/- % and stp. ; Freight on 96 cwt. 2 qr. 8 lb. @ 47/6 per ton of 20 cwt. Cartage and Porterage, £ 1 3s. 6d. ; Fire Insurance 6/- ; Auction expenses 8/4 ; Bank Commission and Interest on Charges 9/- ; Commission and *del credere* @  $2\frac{1}{2}\%$ .

On the 5th March, 1940, an A/S was rendered, and the proceeds were remitted by a bank draft.

You are required (a) to prepare the A/S in proper form ; (b) to make out the bank draft ; and (c) to calculate the amount of the draft in rupees at the exchange rate of 1s. 6d.

2. (a) Define a partnership. What are the essential elements of a partnership, and what circumstances make it an illegal association ?

(b) What are the rules under the Partnership Act, which determine the partners' mutual relations in the absence of an agreement among them ?

3. Describe briefly the distinctive features of the Horizontal and the Vertical Filing systems. Under what circumstances would you prefer the one to the other ?

4. Describe two modern methods of obtaining multiple copies of correspondence, and explain the circumstances under which each is suitable.

5. (a) Explain clearly the difference between :—

(i) General Acceptance and Qualified Acceptance.

(ii) Endorsement in Blank and Endorsement in Full.

(iii) Holder in Due Course and Holder for Value.

- (b) What is the position of a person who takes a cheque crossed 'generally' or 'specially' and bearing in addition the words 'Not Negotiable'?

6. Describe the procedure of sending goods by rail from one town to another, and mention the forms or documents which will have to be filled up and the procedure necessary to take delivery of the goods.

7. (a) 'Fire Insurance is a contract of indemnity and requires utmost good faith.' Explain and illustrate this statement. How far does it apply to life insurance ?

(b) Explain the meanings of *three* of the following insurance terms :—

Insurable Interest ; Surrender Value ; General Average ; Subrogation.

8. Certain goods are shipped from Bombay to London and are duly insured. Explain the nature of the losses for which the shipping company and insurance company are respectively liable under the B/L and the insurance policy. Are there any losses which the owner will have to bear in spite of the goods being insured ?

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# RAJPUTANA BOARD

## INTERMEDIATE EXAMINATION IN COMMERCE

1931

### BUSINESS METHODS AND CORRESPONDENCE

NOTE. Answer *any three* questions from Section A and all the questions from Section B.

#### SECTION A.

(Business Methods.)

1. Write short explanatory notes on *any five* of the following terms ; Holder in due course ; Del credere agent ; Constructive total loss ; Crossed cheque : Mate's receipt ; Proforma invoice ; D/P Bill.

2. Fire insurance is a contract of indemnity and requires utmost good faith. Explain and illustrate this statement.

3. What agreements are contracts ? Give three examples of agreements which are expressly declared by law to be void.

4. Mention the different methods of multiplying commercial papers, giving the special advantages of each.

5. Gulzari & Co., of Calcutta export linseed to Smith Bros. of London. What procedure will they follow in the exportation of these goods ? Explain it clearly, stating the important documents used in the transaction.

#### SECTION B.

(Correspondence)

*Either*

Ranjit Singh, senior partner of the firm of Jiwan Lal Ranjit Singh, retires from business and Gokal Das is admitted

as a new partner. Draft a circular letter to the customers announcing the change.

*Or,*

Mohan Singh, a travelling agent of the Haverro Trading Co., Bombay, is touring in Central India to push the sale of the Company's goods. He submits to his employers a weekly report of his work and suggests therein the reduction of prices of certain goods on account of competition as well as more suitable packing. Draft this report in the form of a letter.

---

1932

## BUSINESS METHODS AND CORRESPONDENCE

NOTE.—Answer *any three* questions from Section A and all questions from Section B.

### SECTION A.

1. Write short notes on *any five* of the following terms :—

Cypher Code ; Documentary Draft ; Subrogation ; F. A. S. ; Credit Note ; Letter of Hypothecation ; and Usance.

2. Explain clearly the principles of law relating to the sale of goods in reference to the following :—

(a) Sale by description.

(b) Sale or return.

(c) Sale by sample.

3. Explain 'Particular Average' as used in marine insurance, and draw up a statement of particular average claim from the following particulars :—

	Rs.
Value of goods if arrived in a sound condition	3,000
Value of goods in a damaged condition ..	2,000
Insured value ..	3,300
Survey expenses ..	40

4. What is meant by a specially crossed cheque ? Draw up one, supplying details from your own imagination.

5. Rahmat & Co., of Bombay import machinery from a firm in England. What procedure will have to be followed at Bombay to enable the importing firm to take delivery of the goods from the shipping company ?

### SECTION B.

(Correspondence)

*Either*

Ganesh & Co., Ajmer, receive a consignment of goods from a firm in Bombay. The consignment is damaged in transit apparently due to bad packing.

You are required to write on behalf of the consignees to the consignors demanding compensation for the damage

*Or,*

Write a letter to your company's bankers, asking them to make enquiries as to the financial stability of a firm with whom your company is about to enter into an important contract.

---

1933

## BUSINESS METHODS AND CORRESPONDENCE

NOTE.—Answer *any three* questions from Section A and all questions from Section B.

### SECTION A.

1. Explain *any three* of the following terms clearly :—

“ Acceptance for honour.”

Drawee in case of need.

Sans Recourse Endorsement.

Accommodation Bill.

Holder in due course.

2. You are put in charge of a wholesale business house at Ajmer having numerous correspondents all over

Rajputana and Central India. Explain clearly how you propose to keep your correspondence in the best possible way.

3. Consider the various remedies open to an unpaid seller for securing payment of price of goods sold to a buyer.

4. Ram Mohan of Delhi purchased cotton piece-goods of William Edward & Co. of Manchester worth £ 256-12-6. The sellers draw upon the buyer at 90 days' sight and negotiate the draft through the National Bank of India Ltd., for collection. Draw up the First of Exchange in proper style and form, and explain what you mean by 90 days' sight.

5. What do you understand by the following terms used in insurance business ?

General Average ;  
Causa Proxima ;  
Insurable Interest ;  
Memorandum Clause.

#### SECTION B.

*Either,*

Discuss the characteristics of a good business letter.

*or,*

\* Ram Chandra, a furniture dealer at Bareilly, takes his son Peare Mohan into partnership as from the first day of the next month. Draft a circular letter to the customers of the new firm, announcing the change in the name of the firm from Ram Chandra & Co., to Ram Chandra & Son, and soliciting the continuance of their patronage.

---

1934

#### BUSINESS METHODS AND CORRESPONDENCE

##### FIRST PAPER.

N.B.—Attempt Question 1 and *any five* of the other questions.

1. *Either,*

Make out a shipping invoice from the following particulars :—

Consignors : Alfred & Co., Manchester. Consignees : Gopaldas Brothers, Bombay, 10 c/s each measuring 3'3" ×

2'9" × 3' marked  Bombay 71/80 shipped per s.s.

'Arabia'. Contents : 60 pcs. Grey-shirting per case each 40 yds. at 3½d. per yd. Charges : Packing 10s. per case. Freight at 21s. per ton (40 cubic feet) plus 10%. Shipping charges 21s. B/L 6d. Insurance at 5s. on 10% above invoice value. Date 1st February, 1934.

*Or,*

A Delhi merchant orders some goods from Liverpool. The goods are shipped to Bombay and the shipper draws on the Delhi Merchant at 30 d/s. D/A. through the National Bank of India, Delhi. Make out a list of the various charges which the Delhi merchant will have to bear in addition to the F. O. B. Liverpool price before the goods are received by him at Delhi. Also name the principal documents which will be used in the transaction.

2. Describe two different methods of filing correspondence and state the nature of the correspondence for which you consider each method particularly suitable.

3. Can the holder of a Bill of Exchange make any alterations in the Bill? What would be the effect of material alterations? Give some examples of alterations which you would consider material.

4. Explain the meanings of the following terms and abbreviations :—

F.G.A. ; C.I.F. ; Marked cheque ; Dead freight.

5. What do you understand by an unpaid seller's rights of 'Lien' and 'Stoppage' in transit? Explain the circumstances under which each of these rights can be exercised.

6. Explain by means of an example the effect of the 'average' clause in a Fire insurance policy. What is meant by 'insurable interest'?

7. How is a company with limited liability registered? In what respects does a Private Company differ from a Partnership?

8. Distinguish between (a) Endorsement in blank (b) Special endorsement, and (c) Restrictive endorsement.

9. What is meant by a document of title? Name and explain *any three* such documents.

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1935

## BUSINESS METHODS AND CORRESPONDENCE

### FIRST PAPER.

N.B.—Attempt *any five* questions. All questions carry equal marks.

1. Make out an Account Sales for 100 bales wool from Trumper & Waddy, Sydney, per SS. *Southern Cross* sold in London by Walter Smith & Co. @  $6\frac{1}{2}d.$  per lb. Gross weight 385 cwt; tare and draft 15 cwt. The charges payable are; freight,  $\frac{1}{2}d.$  per lb. on gross weight and primage 5%. Fire insurance on £ 1,150 at  $\frac{1}{2}\%$ . Dock dues, £ 17. Sale expenses, 31s. 6d. Commission,  $2\frac{1}{2}\%$ , Due date, March 30th 1934.

2. Assume that you are carrying on trade in piece-goods in Bombay under the style of Krishna & Co. You have received quotations from Alfred & Co., Manchester, and want to place an order with them. Make out an indent, giving shipping instructions and other necessary particulars.

3. What do you understand by a 'holder in due course' of a bill of exchange? Can a holder in due course enforce payment of a bill against the acceptor (a) if he received the bill for value from a person who forged the payee's signature, (b) if the drawer's signature was forged?

4. Explain the following terms:—

Acceptance for honour; Documentary bill; Particular average; Del credere commission.

5. What do you understand by (a) Memorandum of Association, and (b) Articles of Association, of a Company? Explain the difference between the two.

6. Goods, duly insured are shipped from London to Bombay. Explain briefly the nature of the losses for which the shipping company and the insurance company are respectively liable under the Bill of Lading and the Insurance policy. Can you mention any losses which the owner of the goods would have to bear in spite of their being insured?

7. Distinguish between 'void' and 'voidable' agreements. Does a binding contract exist in each of the following cases?—

(i) *A* promises in writing to pay Rs. 1,000 to his friend *B* as a gift.

(ii) *C* writes to *D* offering to sell his horse for Rs. 300. *D* writes back accepting the offer, provided he is allowed to pay the price in three monthly instalments.

8. What 'conditions' and 'warranties' are implied in a contract of sale?

9. Discuss the advantages and disadvantages of limited liability. How does a Private Company differ from a Public Company?

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1936

## BUSINESS METHODS AND CORRESPONDENCE

### FIRST PAPER—(*Business Methods*)

1. Make out an export invoice from the following particulars:—

Consignors: Graham & Co., Manchester. Consignees: Amritlal Thakkar, Karachi. 10 cases, each measuring

3'4" × 3' × 2' marked  Karachi,  $\frac{11}{16}$  shipped per SS.

Indiana. Contents: 50 pieces Twill, Pattern No. 386, each case, @ 12s. 6d. per piece of 40 yards each. Charges: Packing 10s. per case; freight @ 25s. per steamer ton (40 cubic feet) plus 10%. Shipping charges 15s. B/L 6d. Insurance at  $\frac{3}{4}$ %. Date 3rd January, 1936.

2. Explain the terms: Causa proxima; Noting; Lay days; Accommodation bills; General average.

3. What is a Negotiable Instrument? Mention the various ways in which a bill of exchange may be endorsed and their effects.

4. *A* sells certain goods to *B* on credit. What are the remedies open to *A* (i) if *B* does not pay him when the period of credit expires and the goods are not delivered, (ii) if *B* becomes insolvent before the payment becomes due and the goods are in transit?

5. What contracts must be performed personally by the parties? Under what conditions is a party to a contract discharged from this obligation?

6. What is insurable interest? Is it necessary that insurable interest should exist when the policy is issued and also when the risk occurs? Discuss with reference to fire and marine policies.

7. What methods of multiplying copies will you adopt when you require (i) 50 copies, (ii) 120 copies, (iii) 800 copies? Briefly explain the methods.

8. Compare the position of a partner (i) with that of a director of a company, (ii) with that of a shareholder of a limited company.

9. What are the essentials of a good contract?

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1937

## BUSINESS METHODS AND CORRESPONDENCE

## FIRST PAPER.

*(Business Methods)*

NOTE—Attempt *any five* questions. All questions carry equal marks.

1. Describe briefly the working of a Rotary Multiplier. What advantages does this method possess over other kinds of duplicators?

2. Describe two different methods of filing correspondence, and state the nature of the correspondence for which you consider each method particularly suitable.

3. Outline the procedure to be adopted by an Ajmer merchant who desires to import some goods from England.

4. What is a Documentary Bill of Exchange? Prepare an imaginary one.

5. Clearly distinguish between 'misrepresentation' and 'fraud'. Illustrate your answer with examples.

6. What conditions and warranties are implied in every contract of sale?

7. Give an export invoice, using imaginary particulars.

8. In what circumstances would a bank refuse to pay a cheque drawn upon it by a customer?

9. Explain the following terms: Average clause; Insurable interest; Cypher telegram; Particular average; Doctrine of subrogation.

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1938

## BUSINESS METHODS AND CORRESPONDENCE

FIRST PAPER—*(Business Methods)*

Note—Attempt *any five* question All questions carry equal marks.

1. (a) What steps are usually taken to secure the payment of an overdue account in business?

- (b) Prepare a credit note, using imaginary particulars.
2. What is a card index? Describe its advantages and disadvantages over other forms of indexes. For what purposes can a card index be used?
3. Give a brief description of any modern apparatus used for duplicating letters etc.
4. (a) What risks are usually covered by a policy of marine insurance?
- (b) In case of loss caused by fire what has the insured got to do before his claim can be paid?
5. Explain the following :—  
Letter of Hypothecation, Days of Grace; *Caveat Emptor*, Constructive Total, Retiring a Bill.
6. Explain clearly the principles of law relating to the sale of goods (a) by description and (b) by sample.
7. Distinguish between—  
(a) Specific and unascertained goods.  
(b) A sale and an agreement to sell.
8. Define a 'Negotiable Instrument'. Give standard forms for a (i) Cheque, and (ii) Promissory Note.
9. A merchant in Delhi wishes to import certain goods from Germany. Explain briefly the procedure that he should follow.
10. Prepare in proper form an export invoice using imaginary details.
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1940

## BUSINESS METHODS AND CORRESPONDENCE

## FIRST PAPER

(Business Methods.)

NOTE:—Attempt any *five* questions. All questions carry equal marks.

1. Assume that you are carrying on trade in piece-goods in Bombay under the style of Krishna & Co. You

have received quotations from Alfred & Co., Manchester, and want to place an order with them. Make out an indent, giving shipping instructions and other necessary particulars.

2. What are the functions of a wholesaler? What services does he render (a) to the manufacturer, and (b) to the retailer.

3. Define a Bill of Lading. What functions does it fulfil? Describe the characteristics of a negotiable instrument in such a way as to make it clear how, if at all, a bill of lading falls short of being one.

4. What are the respective liabilities of the drawer, acceptor, and endorsers of a bill of exchange, when the bill is accepted (a) for value, and (b) for the accommodation of the drawer?

5. Consider the various remedies open to an unpaid seller for securing payment of the price of goods sold to a buyer.

6. What do you understand by the doctrine of subrogation? In a marine insurance policy goods are insured 'lost or not lost'. How do you reconcile the effect of these words with the rule that the assured must have insurable interest in the goods before the loss occurs?

7. Mention two methods of multiplying commercial papers, giving the special advantages of each.

8. You are in charge of the Correspondence Department of a big business house run on modern lines. Your office handles several hundred letters per day. Show briefly how you would run your department.

9. What do you understand by the expression 'past consideration'? Illustrate by an example. What are the exceptions to the rule that an agreement without consideration is void?

10. Explain any *five* of the following:—

General Average; Floating Policy; Bonded Warehouses; Dictaphone; Cypher telegrams; Consular invoice; F. O. R. Destination; Exchange.

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